TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 667

JOHN CARLSON, APPELLANT,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

APPEAL FROM SUPERIOR COURT OF SHASTA COUNTY, STATE OF CALIFORNIA

FILED JANUARY 25, 1940.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939.

No. 667

JOHN CARLSON, APPELLANT,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

APPEAL FROM SUPERIOR COURT OF SHASTA COUNTY, STATE OF CALIFORNIA

INDEX.

	Original	Print
Record from Superior Court of Shasta County	a	1
Caption (omitted in printing)	a	
Record from Justice's Court of Township No. 9, County of Shasta	1	1
Complaint and order thereon	1	1
Motion to dismiss, to quash complaint, and objections to jurisdiction	4	2
Demurrer to complaint	10	6
Memorandum of points and authorities in support of demurrer, motion to dismiss, etc.	12	7
Stipulation as to trial	14	7
Motion to dismiss	15	8
Stipulation re continuance	17	9
Motion to dismiss at conclusion of trial	18	9
Motion in arrest of judgment	21	11
Notice of appeal from judgment of conviction	27	15
Statement on appeal, etc.	28	15
Stipulation concerning statement of evidence on appeal, and order thereon	32	18
Minute entries	34	19

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 14, 1940.

—6219

	Original	Print
Record from Superior Court of Shasta County—Continued.		
Record from Justice's Court of Township No. 9, County of Shasta—Continued.		
Statement of evidence	1	20
Caption and appearances	1	21
Colloquy	2	21
Testimony of Alvin M. Cibula	3	22
Offer of motion to dismiss	13	28
Testimony of John Carlson	14	29
John Weise	35	42
John Morgan	39	44
John Weise (recalled)	73	65
Renewal of motions to dismiss	75	66
Judgment	76	67
Reporters' certificates (omitted in printing)	78	
Certificate of justice	80	68
Exhibit "A"—Anti-Picketing Ordinance	82	68
Exhibits "B-1" to "B-4", inc.—Signs carried by pickets	83	68
Defendant's Exhibit 1—Charge before Labor Board, Case No. XX-C-500	87	69
Defendant's Exhibit 2—Amended charge before Labor Board, Case No. XX-C-500	90	70
Decision, Ross, J.	92	73
Judgment	94	73
Opinion, Ross, J., "In matter of petition of Richard Gladstein et al., for writ of habeas corpus"	95	73
Petition for appeal, assignments of error and prayer for reversal	99	74
Order allowing appeal	103	77
Bond on appeal (omitted in printing)	105	
Citation and service (omitted in printing)	107	
Statement of points to be relied upon and designation of parts of record to be printed	109	78

[fol. a] [Caption omitted]

[fol. 1]

IN JUSTICE'S COURT OF TOWNSHIP NUMBER NINE, COUNTY OF SHASTA, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

RICHARD GLADSTEIN, JOHN MORGAN, JOHN WALKER, JOHN WIESE, Mike Brovich, James Freeman, Marx Barichvich, E. P. Glad, Harold Allinger, L. A. Powell, E. J. Cherry, Ray Standow, Harold Arrasmith, George Snell, John Carlson, Frank Carson, R. G. Akeman, Arvi Larson, Jack Casperson, John McMahon, Charles Anderson, James Smith, Howard Dyer, G. L. Adams, Frank Wheeler, Marion Ruiz, Melvin Besonday, J. R. Cooper and Carl Nelson, Defendants.

COMPLAINT—Criminal

Personally appeared before me, this 24th day of February, 1939, Alvin M. Cibula, Assistant District Attorney, County of Shasta, who being first duly sworn, complains and accuses Richard Gladstein, John Morgan, John Walker, John Wiese, Mike Brovich, James Freeman, Marx Barichvich, E. P. Glad, J. R. Cooper, Harold Allinger, L. A. Powell, E. J. Cherry, Ray Standow, Harold Arrasmith, George Snell, John Carlson, Frank Carson, R. G. Akeman, Arvid Larson, Jack Casperson, John McMahon, Charles Anderson, James Smith, Howard Dyer, G. L. Adams, Frank Wheeler, Marion Ruiz, Melvin Besonday and Carl Nelson [fol. 2] of the crime of Picketing, in violation of the anti-Picketing Ordinance of the County of Shasta, State of California, passed by the Board of Supervisors of the County of Shasta, State of California, on the 4th day of April, 1938, committed as follows:

That the above-named defendants did on or about the 24th day of February, 1939, wilfully and unlawfully loiter, picket, and display signs and banners in a public place and in and upon a public highway in front of, and in the vicinity of the Delta Tunnel Project, in Number Nine Township, County of Shasta, State of California, for the purpose of inducing and influencing persons to refrain from doing and

performing services and labor at said Delta Tunnel Project, in violation of that certain ordinance passed by the Board of Supervisors of the County of Shasta, State of California, on the 4th day of April, 1938, entitled, "An Ordinance Prohibiting Loitering, Picketing, Carrying or Displaying Banners, Badges, Signs or Transparencies, or Speaking in Public Streets, Sidewalks, Alleys or Other Public Places in a Loud or Unusual Tone, for Certain Purposes Therein Named, and Providing a Penalty for Any Violation Thereof."

Said complainant therefore prays that a warrant may be issued for the arrest of the above-named defendants, and that they may be dealt with according to law.

Alvin M. Cibula.

Subscribed and sworn to before me this 24th day of February, 1939.

Marie C. Mahon, Justice of the Peace of Township Number Nine. (Seal.)

[fol. 3] ORDER

It appearing to me that the offense of Picketing, in violation of the Anti-Picketing Ordinance of the County of Shasta, State of California, passed by the Board of Supervisors of the County of Shasta, State of California, on the 4th day of April, 1938, as charged and set out in the within complaint, has been committed, and that there is sufficient cause to believe the within named defendants guilty thereof, I order that they be held to answer the same, and that they be admitted to bail in the sum of One Hundred and no/100— Dollars each, and they are hereby committed to the Sheriff of Shasta County, until they give such bail.

Dated: February 24th, 1939.

Marie C. Mahon, Justice of the Peace of Township Number Nine. (Seal.)

[fol. 4] IN JUSTICE'S COURT OF TOWNSHIP NUMBER NINE, COUNTY OF SHASTA

[Title omitted]

MOTION TO DISMISS, TO QUASH COMPLAINT AND OBJECTIONS TO JURISDICTION—Filed March 3, 1939

The defendants named in the within action hereby object, and each of them does hereby object, to the jurisdiction of

the above-entitled court to hear and try the above cause, and the above-entitled court is hereby petitioned, and motions to that effect are hereby made to quash the complaint on file herein, and to dismiss said cause and said complaint for the reason that said court does not have jurisdiction to entertain said complaint or hear and try said cause on the ground that said complaint does not state a public offense against the defendants or any of them; that said complaint is based entirely upon certain portions of Section 2 of an ordinance known as the Anti-Picketing Ordinance of Shasta County, which said portions of said Section 2 are unconstitutional and invalid, and the enforcement of which against these defendants and the arrest and prosecution of these defendants thereunder, is unconstitu-
[fol. 5] tional and invalid.

That said unconstitutionality and invalidity consists in this: That said portions of Section 2 aforesaid, and the enforcement thereof against these defendants, and the arrest and prosecution of these defendants thereunder, and the complaint in this cause which is based solely and entirely upon said portions, are and each of them is in contravention of:

I

Article XIV, Section 1 of the Constitution of the United States, in that defendants and each of them are, by virtue of said complaint and said portions of said Section 2 of said ordinance, and the enforcement thereof against these defendants, and the arrest and prosecution of these defendants thereunder, deprived by the State of California and by the County of Shasta of liberty and property without due process of law, to-wit: of freedom of speech, freedom of press, and freedom of assembly.

II

Article I, Section 1 of the Constitution of the State of California, in that the defendants and each of them are deprived by said complaint, said portions of Section 2 of said ordinance, and the enforcement thereof against these defendants, and the arrest and prosecution of these defendants thereunder, of the right of enjoying and defending liberty, and of acquiring, possessing and protecting property, and
[fol. 6] of pursuing and obtaining safety and happiness.

III

Article I, Section 9 of the Constitution of the State of California, in that the defendants and each of them are deprived by said complaint, said portions of Section 2 of said ordinance, and the enforcement thereof against these defendants, and the arrest and prosecution of these defendants thereunder, of the right freely to speak, write, and publish their sentiments, and further that the liberty of speech and the liberty of press of the defendants and each of them is restrained and abridged by said portions of Section 2 of said ordinance.

IV

Article I, Section 10 of the Constitution of the State of California, in that the defendants and each of them are deprived by said complaint, said portions of Section 2 of said ordinance, and the enforcement thereof against these defendants, and the arrest and prosecution of these defendants thereunder, of the right to freely assemble together to consult for the common good, to instruct their representatives, and to petition the legislature for redress of grievances.

V

Article I, Section 11 of the Constitution of the State of California, in that said portions of Section 2 of said ordinance do not have a uniform operation.

VI

Article I, Section 13 of the Constitution of the State of [fol. 7] California, in that the defendants and each of them are deprived by said complaint, said portions of Section 2 of said ordinance, and the enforcement thereof against these defendants, and the arrest and prosecution of these defendants thereunder, of liberty and property without due process of law.

VII

Article I, Section 21 of the Constitution of the State of California, in that said portions of Section 2 of said ordinance grant and confer upon a class of citizens, to-wit: the employing class, special privileges and immunities which, upon the same terms, are not granted to all citizens.

VIII

Article XI, Section 11 of the Constitution of the State of California, in that said portions of Section 2 of said ordinance purport to be and are local and police regulations which are, and the enforcement thereof against these defendants, and the arrest and prosecution of these defendants thereunder is, in conflict with the general laws of the State of California.

IX

The National Labor Relations Act, 49 U. S. Statutes 449, in that said complaint, said portions of Section 2 of said ordinance, and the enforcement thereof against these defendants, and the arrest and prosecution of these defendants thereunder, deny, abridge, and interfere with the right of the defendants and each of them to self-organization, to [fol. 8] form, join, and assist labor organizations, to bargain collectively through representatives of their own choosing, to the exercise by defendants as workers of full freedom of association, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

X

Section 923 of the Labor Code of the State of California, in that said complaint, said portions of Section 2 of said ordinance, and the enforcement thereof against these defendants, and the arrest and prosecution of these defendants thereunder, abridge and interfere with the right of the defendants and each of them to have full freedom of association, self-organization, and designation of representatives of their own choosing to negotiate the terms and conditions of their employment, and further that said defendants and each of them are denied and deprived of freedom from interference, restraint and coercion in the designation of such representatives, in self-organization, and in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Wherefore, the defendants and each of them pray that the foregoing objections to the jurisdiction as aforesaid of the court be sustained, and that the within motions to quash said complaint and to dismiss said cause and complaint as

aforesaid be forthwith granted, and that the defendants and [fol. 9] each of them be hence restored to their liberty.

Dated: March 3, 1939.

Gladstein, Grossman and Margolis, Attorneys for Defendants.

[fol. 10] IN JUSTICE'S COURT OF TOWNSHIP NUMBER NINE, COUNTY OF SHASTA

[Title omitted]

DEMURRER TO COMPLAINT—Filed March 3, 1939

Comé now the defendants in the above action and demurring to the complaint on file herein, each for himself, specifies and alleges as follows:

I

That said complaint does not state a public offense against these defendants or any of them, and the facts stated in said complaint do not constitute a public offense as to these defendants or any of them, for the reason that said complaint and the portions of Section 2 of the ordinance upon which said complaint is based, do and each of them does, and the enforcement or threatened enforcement against these defendants of said portions of Section 2 of said ordinance, and the arrest and prosecution of these defendants thereunder, does violate and contravene Article XIV, Section 1 of the United States Constitution and Article I, Sections 1, 9, 10, 11, 13 and 21, and Article XI, Section 11 [fol. 11] of the Constitution of the State of California, and the provisions of the National Labor Relations Act, and Section 923 of the California Labor Code, by depriving the defendants and each of them of their liberty, property, freedom of speech, freedom of press, freedom of assembly, and freedom to engage in concerted activities as workers for their mutual aid and protection. By reason whereof said portions of Section 2 of said ordinance are, and the enforcement and threatened enforcement thereof against these defendants, and the arrest and prosecution of these defendants thereunder are, and the said complaint based upon said portions of Section 2 of said ordinance is, unconstitutional and invalid.

Wherefore, the defendants pray that the court forthwith dismiss the within case, allow the within demurrer, and that the defendants be hence restored to their liberty.

Dated: March 3, 1939.

Gladstein, Grossman and Margolis, Attorneys for Defendants.

[fol. 12] IN JUSTICE'S COURT OF TOWNSHIP NUMBER NINE, COUNTY OF SHASTA

[Title omitted]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER, MOTION TO DISMISS, AND OBJECTIONS TO JURISDICTION—Filed March 3, 1939

A judicial tribunal has no jurisdiction to hold or try a defendant under an invalid law.

Ex-parte Paley, 155 Cal. 472;

Ex-parte Kearny, 55 Cal. 212;

Matter of Zany, 20 Cal. App. 360.

Peaceful picketing and loitering are protected by constitutional provisions of the United States and of the State of California.

Federal Constitution, Article XIV, Section 1;

California Constitution, Article I, Sections 1, 9, 10, 11, 13, and 21; Article XI, Section 11.

A county ordinance prohibiting peaceful picketing and loitering is invalid.

Lisse vs. Local Union, 2 Cal. (2d) 312;

[fol. 13] In re Williams, 158 Cal. 550;

In re Lyons, 94 Cal. App. Dec. 70.

Respectfully submitted,

Gladstein, Grossman & Margolis, Attorneys for Defendants.

[fol. 14] IN JUSTICE'S COURT OF NUMBER NINE TOWNSHIP, COUNTY OF SHASTA

[Title omitted]

STIPULATION AS TO TRIAL—Filed March 21, 1939

It is hereby stipulated, by and between Laurence W. Carr, Esq., District Attorney of the Shasta County, and

Richard Gladstein, Esq., Attorney for the above-entitled defendant, that the time of trial of the above entitled and numbered case previously set for March 20th, 1939, is postponed and set over to the 11th day of April, 1939, for trial.

And it is hereby expressly stipulated that the defendant hereby waives his statutory right to be tried within thirty days from the date of his arraignment.

Dated March 21, 1939.

Laurence W. Carr, District Attorney. Richard Gladstein, Attorney for Defendant.

[fol. 15] In Justice's Court of Township Number Nine, County of Shasta

[Title omitted]

Motion to Dismiss—Filed April 11, 1939

The defendant hereby moves the court that the within action and the complaint herein be forthwith dismissed, and for grounds for said motion specifies as follows:

I

Each and every, all and singular, the grounds, statements, allegations and averments contained in that certain "motion to dismiss, to quash complaint, and to objections to jurisdiction" heretofore filed in the within proceeding, all of which are hereby referred to and by this reference incorporated herein in full as though set forth at length herein.

II

Upon the further ground that the evidence introduced by the plaintiff is insufficient in fact and/or as a matter of law to justify or support a judgment of conviction, and that a judgment of conviction based upon the evidence intro-
[fol. 16] duced by the plaintiff would not be supported by the evidence, and would be contrary to the evidence.

III

Upon the further ground that, based upon the evidence introduced by the plaintiff, the application of the aforesaid

anti-picketing ordinance thereto and to the defendant, and the construction of the said ordinance in such manner as to make the same apply to a case based upon the evidence introduced by the plaintiff, would and does deprive the defendant of substantial and constitutional rights, as more particularly set forth in the aforementioned "motion to dismiss, to quash complaint, and objections to jurisdiction."

Wherefore the defendant prays that the court grant the within motion, and forthwith dismiss the said complaint and the said case, and forthwith restore the defendant to his liberty.

Dated: This 11th day of April, 1939.

Gladstein, Grossman and Margolis, Attorneys for Defendant.

[fol. 17] IN JUSTICE'S COURT OF TOWNSHIP NUMBER NINE, COUNTY OF SHASTA

[Title omitted]

STIPULATION RE CONTINUANCE—Filed April 24, 1939

It is hereby stipulated that the trial of the above matter may be continued from April 25th to April 28th, 1939, at 10 A. M. o'clock, and all objections to such continuance are hereby waived.

Dated: This 24th day of April, 1939.

Lawrence W. Carr, Attorney for Plaintiff. Gladstein, Grossman & Margolis, Attorney for Defendant.

[fol. 18] IN JUSTICE'S COURT OF TOWNSHIP NUMBER NINE, COUNTY OF SHASTA

[Title omitted]

MOTION TO DISMISS AT CONCLUSION OF TRIAL—Filed April 28, 1939

The defendant hereby moves the court that the within action and the complaint herein be forthwith dismissed, and for grounds for said motion specifies as follows:

I

Each and every, all and singular, the grounds, statements, allegations and averments contained in that certain "motion

to dismiss, to quash complaint, and to objections to jurisdiction" heretofore filed in the within proceeding, all of which are hereby referred to and by this reference incorporated herein in full as though set forth at length herein.

II

Upon the further ground that the evidence introduced by the plaintiff is insufficient in fact and /or as a matter of law to justify or support a judgment of conviction, and that a judgment of conviction based upon the evidence intro-
[fol. 19] duced by the plaintiff would not be supported by the evidence, and would be contrary to the evidence.

III

Upon the further ground that, based upon the evidence introduced by the plaintiff, the application of the aforesaid anti-picketing ordinance thereto and to the defendant, and the construction of the said ordinance in such manner as to make the same apply to a case based upon the evidence introduced by the plaintiff, would and does deprive the defendant of substantial and constitutional rights, as more particularly set forth in the aforementioned "motion to dismiss, to quash complaint, and objections to jurisdiction."

IV

Upon the further ground that, by virtue of the uncontradicted evidence introduced herein on behalf of the defendant, a judgment of dismissal of the within action is required as a matter of law, for the reason that a judgment of conviction of the defendant would not be justified or supported by the evidence introduced herein.

V

Upon the further ground that, based upon the evidence introduced by the plaintiff and on behalf of the defendant, a judgment of conviction of the defendant would deprive the defendant of substantial and constitutional rights, as more particularly set forth in that certain "motion to dis-
[fol. 20] miss, to quash complaint, and objections to jurisdiction" heretofore filed in the within proceeding.

Wherefore, the defendant prays that the court grant the within motion, and forthwith dismiss the said complaint and

the said case, and forthwith restore the defendant to his liberty.

Dated: This 28th day of April, 1939.

Gladstein, Grossman and Margolis, Attorneys for Defendant.

[fol. 21] In Justice's Court of Township Number Nine, County of Shasta

[Title omitted]

Motion in Arrest of Judgment—Filed April 28, 1939

The defendant hereby makes a motion in arrest of judgment herein, and for grounds for said motion specifies as follows:

I

The complaint in this action is substantially defective, for the reason that it does not state a public offense against this defendant, and the facts stated in said complaint do not constitute a public offense as to this defendant, and the court does not have jurisdiction to entertain said complaint or hear or try said cause upon said complaint, or base any judgment of conviction thereon or upon the evidence introduced herein, for the reason that said complaint is based entirely upon certain portions of Section 2 of an ordinance known as the Anti-picketing Ordinance of Shasta County, which said portions of said Section 2 are unconstitutional and invalid, and the enforcement of which against this defendant, and the arrest and prosecution of this defendant [fol. 22] thereunder, and the conviction of this defendant upon said complaint, and the conviction of this defendant upon the evidence introduced herein, are, and each of them is, unconstitutional and invalid.

That said unconstitutionality and invalidity consists in this: That said portions of Section 2 aforesaid, and the enforcement thereof against this defendant, and the arrest and prosecution of this defendant thereunder, and the conviction of this defendant of a violation thereof, and the complaint in this cause which is based solely and entirely upon said portions, are, and each of them is, in contravention of:

1.

The Fourteenth Amendment to the Constitution of the United States; in that this defendant is, by virtue of said complaint and said portions of said Section 2 of said ordinance, and the enforcement thereof against this defendant, and the arrest and prosecution of this defendant thereunder, and the conviction of this defendant of a violation thereof, deprived by the State of California and by the County of Shasta of liberty and property without due process of law, to-wit: of freedom of speech, freedom of press, and freedom of assembly, and freedom of locomotion.

2

Article I, Section 1 of the Constitution of the State of California, in that this defendant is deprived by said complaint, said portions of Section 2 of said ordinance, and [fol. 23] the enforcement thereof against this defendant, and the arrest and prosecution of this defendant thereunder, and the conviction of this defendant of a violation thereof, of the right of enjoying and defending liberty, and of acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness.

3

Article I, Section 9 of the Constitution of the State of California, in that this defendant is deprived by said complaint, said portions of Section 2 of said ordinance, and the enforcement thereof against this defendant, and the arrest and prosecution of this defendant thereunder, and the conviction of this defendant of a violation thereof, of the right freely to speak, write, and publish his sentiments, and further that the liberty of speech and the liberty of the press of this defendant is restrained and abridged by said portions of Section 2 of said ordinance.

4

Article I, Section 10 of the Constitution of the State of California, in that this defendant is deprived by said complaint, said portions of Section 2 of said ordinance, and the enforcement thereof against this defendant, and the arrest and prosecution of this defendant thereunder, and the conviction of this defendant of a violation thereof, of the right

to freely assemble to consult for the common good, to instruct representatives, and to petition the legislature for redress of grievances.

[fol. 24]

5

Article I, Section 11 of the Constitution of the State of California, in that said portions of Section 2 of said ordinance do not have a uniform operation.

Article I, Section 13 of the Constitution of the State of California, in that this defendant is deprived by said complaint, said portions of Section 2 of said ordinance, and the enforcement thereof against this defendant, and the arrest and prosecution of this defendant thereunder, and the conviction of this defendant of a violation thereof, of liberty and property without due process of law.

7

Article I, Section 21 of the Constitution of the State of California, in that said portions of Section 2 of said ordinance grant and confer upon a class of citizens, to-wit: the employing class, special privileges and immunities which, upon the same terms, are not granted to all citizens.

8

Article XI, Section 11 of the Constitution of the State of California, in that said portions of Section 2 of said ordinance purport to be and are local and police regulations which are, and the enforcement thereof against this defendant, and the arrest and prosecution of this defendant thereunder, and the conviction of this defendant of a violation thereof, is in conflict with the general laws of the State of California.

[fol. 25]

9

The Fourteenth Amendment to the Constitution of the U. S., and the National Labor Relations Act, 49 U. S. Statutes 449, in that said complaint, said portions of Section 2 of said ordinance, and the enforcement thereof against this defendant, and the arrest and prosecution of this defendant thereunder, and the conviction of this defendant of a violation thereof, deny, abridge and intertere with the right of the defendant to form, join, and assist

labor organizations, to bargain collectively through representatives of his own choosing, to the exercise by defendant as a worker of full freedom of association, and to engage in concerted activities, including picketing, for the purpose of collective bargaining or other mutual aid or protection, thereby depriving defendant of property without due process of law.

10

Section 923 of the Labor Code of the State of California, in that said complaint, said portions of Section 2 of said ordinance, and the enforcement thereof against this defendant, and the arrest and prosecution of this defendant thereunder, and the conviction of this defendant of a violation thereof, abridge and interfere with the right of the defendant to have full freedom of association and designation of representatives of his own choosing to negotiate the terms and conditions of his employment, and further that said defendant is denied and deprived of freedom from interference, restraint and coercion in the designation of such repre- [fol. 26] sentatives and in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

11

The Fourteenth Amendment to the Constitution of the United States, in that this defendant is, by virtue of said complaint and said portions of said Section 2 of said ordinance, and the enforcement thereof against this defendant, and the arrest and prosecution of this defendant thereunder, and the conviction of this defendant of a violation thereof, denied by the State of California and by the County of Shasta of the equal protection of the laws.

WHEREFORE, this defendant prays that the foregoing motion in arrest of judgment be granted, and that the said complaint be dismissed, and that the judgment of conviction against defendant be quashed and set aside, and that the defendant be hence restored to his liberty.

Dated: April 28, 1939.

Gladstein, Grossman and Margolis, Attorneys for Defendants.

[fol. 27] IN JUSTICE'S COURT OF TOWNSHIP NUMBER NINE, COUNTY OF SHASTA

[Title omitted]

NOTICE OF APPEAL FROM JUDGMENT OF CONVICTION—Filed May 2, 1939

To the Honorable Marie C. Mahon, Justice of the Above Entitled Court, and to Lawrence W. Carr, District Attorney of the County of Shasta:

Please take notice that the defendant, John Carlson, hereby appeals to the Superior Court of the State of California in and for the County of Shasta from that certain judgment of conviction made and entered against him on the 28th day of April, 1939 in the above entitled action, and from the whole thereof. This appeal is taken on the questions of both law and fact.

Dated: May 1st, 1939.

——— ———, ———, Attorneys for Defendant.

[fol. 28] IN JUSTICE'S COURT OF TOWNSHIP NUMBER NINE, COUNTY OF SHASTA

[Title omitted]

DEFENDANT'S STATEMENT ON APPEAL, AND APPLICATION TO TRIAL COURT STATING GROUNDS OF APPEAL, AND POINTS ON WHICH DEFENDANT RELIES, AND DESIGNATION OF PORTIONS OF REPORTER'S NOTES NECESSARY TO HAVE TRANSCRIBED—Filed May 5, 1939

To the Honorable Marie C. Mahon, Justice of the Above Entitled Court, and to Lawrence W. Carr, District Attorney of Shasta County, and to the Clerk of Said Court:

Whereas the defendant above named having on the second day of May, 1939 duly taken an appeal from the judgment entered in the above action by the said court on the 28th day of April, 1939,

You and Each of You Are Hereby Notified that said defendant now presents this, his statement of appeal and the

grounds of appeal and points on which he relies upon appeal from the above entitled court to the Superior Court of the [fol. 29] State of California, in and for the County of Shasta, as follows, to-wit:

I

That the evidence taken and heard by the court in said cause was insufficient to justify the judgment.

II

That the judgment is contrary to law.

III

That the judgment is contrary to the evidence.

IV

That the judgment is contrary to the law and the evidence.

V

That the court erred in its decisions on matters and questions of law arising during the course of the trial.

VI

That the court erred in refusing to grant the defendant's "motion to dismiss, to quash complaint, and objections to jurisdiction", which is hereby referred to and by this reference incorporated herein in full.

VII

That the court erred in over-ruling the defendant's "demurrer to complaint", which is hereby referred to and by this reference incorporated herein in full.

VIII

That the court erred in refusing to grant the defendant's [fol. 30] "motion to dismiss" made at the conclusion of the People's case, which is hereby referred to and by this reference incorporated herein in full.

IX

That the court erred in refusing to grant the defendant's "motion to dismiss at conclusion of trial", which is hereby

referred to and by this reference incorporated herein in full.

X

That the court erred in refusing to grant the defendant's "motion in arrest of judgment", which is hereby referred to and by this reference incorporated herein in full.

Defendant now designates what portions of the phonographic reporter's notes are necessary to be transcribed to fairly present the points relied upon by the defendant:

I

All of the evidence received and taken down by the phonographic reporter during the trial of the case, including all rulings and remarks of the court and objections made by either side during the course of the trial and the rulings and comments of the court thereon.

II

All of the motions, demurrers, and legal objections made or filed to the complaint or to the evidence introduced by the People or to the evidence introduced in the case.

III

All of the proceedings throughout and during the trial [fol. 31] of said action, and at the time the defendant made various motions and filed demurrers and other legal objections as shown by the record of the case.

IV

All of the proceedings at the time the defendant took his appeal.

The defendant now asks that the court make an order for the transcription thereof and that said transcript shall constitute and be the defendant's proposed statement of the evidence on appeal, and the defendant further asks that there be delivered to him within the time required by law a copy of the phonographic reporter's notes and also a copy of the transcript on appeal in said action.

Dated: May 3rd, 1939.

Gladstein, Grossman & Margolis, Attorneys for the Defendant.

Let the transcript be prepared in accordance with the foregoing application, and said transcript shall be and constitute the defendant's proposed statement of the evidence on appeal.

Dated: May 31, 1939.

Marie C. Mahon, Justice of the above entitled Court.

[fol. 32] IN JUSTICE'S COURT OF TOWNSHIP NUMBER NINE, COUNTY OF SHASTA

[Title omitted]

STIPULATION CONCERNING STATEMENT OF EVIDENCE ON APPEAL

It is hereby stipulated that the transcript of the phonographic reporter of the testimony and evidence introduced in the trial of the above action may and shall be and constitute the defendant's proposed statement of evidence on appeal, and likewise the People's proposed statement of evidence on appeal, and that when the said transcript has been prepared and approved as correct by the above court, the same shall in all respects be and constitute *and* record of the above action and shall be in lieu of any proposed statements of evidence required by the Rules of the Judicial Council of the State of California and the statutes in such cases made and provided.

Dated: May 3rd, 1939.

Lawrence W. Carr, District Attorney. Gladstein, Grossman & Margolis, Attorneys for Defendant.

[fol. 33] ORDER

Pursuant to the above stipulation it is hereby ordered that the reporter's transcript of the testimony and evidence introduced in the trial of the above action shall be and constitute, when approved as correct by the court, the record on appeal in the within action, and shall be in lieu of any other statements or proposed statements of evidence required by the Rules of the Judicial Council and the statutes in such cases made and provided.

Dated: May 31, 1939.

Marie C. Mahon, Justice of the above entitled Court.

[fol. 34] IN JUSTICE'S COURT OF TOWNSHIP NUMBER NINE, COUNTY OF SHASTA

[Title omitted]

MINUTE ENTRIES IN JUSTICE'S DOCKET BOOK

February 24, 1939. Complaint filed. Warrant issued. Warrant returned. Defendants in court and state their true names to be: Richard Gladstein, John Morgan, John Walker, John Wiese, James Freeman, E. P. Glad, L. A. Powell, Ray Standow, Frank Carson, James Smith, and G. L. Adams. Marion Ruiz, J. R. Cooper, E. J. Cherry, Melvin Besonday, Mike Brovich, Marx Barichvich, Harold Allinger, Harold Arrasmith, George Snell, John Carlson, Jack Casperson, John McMahon, Howard Dyer, Frank Wheeler, Carl Nelson, Arvi Larson, R. G. Akeman, are ordered admitted to bail in the sum of $100 each and time to plead set for February 28, 1939, at 10 o'clock A. M. Defendants committed in default of bail.

February 28, 1939. 10 o'clock A. M. Justice R. P. Stimmel presiding. Case called. Defendants with counsel Richard Gladstein, Esq., and Alvin Cibula, Deputy District At-[fol. 35] torney, in court. Defendants each entered pleas of "not guilty" to the offense charged. Defendants make motion for a reduction of bail. Defendants move court for separate trials for each defendant. Motions for reduction of bail and for separate trial taken under advisement to March 3, 1939, at 9:30 o'clock A. M. Time to set date of trial set for March 3, 1939 at 9:30 o'clock A. M. Bail bond filed for defendants Richard Gladstein, John Morgan, John Walker, John Wiese, James Freeman, E. P. Glad, L. A. Powell, Ray Standow, Frank Carson, James Smith, G. L. Adams, Marion Ruiz, J. R. Cooper, E. J. Cherry, Melvin Besonday, Mike Brovich. Bond approved and said defendants ordered released from custody.

March 2, 1939. Order issued for release of defendants Harold Allinger and John Carlson on their own recognizance.

March 3, 1939. Defendants with their counsel Richard Gladstein, Esq., and Harold Symonds, Esq.; Alvin E. Cibula, Deputy District Attorney, in court. Defendants move to withdraw pleas of "not guilty" of the offense charged for the purpose of filing a demurrer. Motion taken under ad-

visement until 2:30 o'clock P. M. of March 3, 1939. Motion for reduction of bail and separate trial continued to 2:30 o'clock P. M. by stipulation in open court. Defendant Harold Allinger ordered remanded into custody of the Sheriff of Shasta county until he furnish bail of $100. Order releasing said defendant Harold Allinger ordered vacated.

March 3, 1939. Richard Gladstein, attorney for defendants, and Alvin Cibula, Deputy District Attorney, in court. [fol. 36] Motion to withdraw pleas of "not guilty" granted. Defendants withdraw pleas of "not guilty" heretofore entered. Demurrer to complaint and motion to dismiss filed. Demurrer overruled and motion to dismiss denied. Defendants enter plea of "not guilty" of the offense charged. Motion for separate trials by stipulation ordered dropped from the calendar and may be renewed. Motion to reduce bail withdrawn, with right to renew motion. Trial set for March 20, 1939, for defendant John Carlson, at 10 o'clock A. M. by stipulation in open court. Separate trials granted to defendants John Carlson and Carl Nelson by stipulation in open court. Trial of defendant Carl Nelson set for March 21, at 10 o'clock A. M. Trial set as to remainder of defendants for March 29th at 10 o'clock A. M.

March 14, 1939. Defendant John McMahon ordered released on his own recognizance.

March 15, 1939. Defendants Harold Arrasmith and Harold Dyer ordered released on their own recognizance.

[fol. 1] In Justice's Court of Township Number Nine, County of Shasta

Before Honorable Marie C. Mahon, Justice of the Peace.

[Title omitted]

Statement of Evidence

Trial

On Complaint Charging Picketing: Violation of Anti-Picketing Ordinance of Shasta County.

Court Room of the Justice of the Peace, Redding, California.

Tuesday, April 11, 1939, 10:30 A. M.

APPEARANCES

For the People

Lawrence W. Carr, Esq., District Attorney, and John Span, Esq., Deputy District Attorney.

For the Defendant

Richard Gladstein, Esq., for Gladstein, Grossman & Margolis.

The trial of this case before the Justice's Court of Township No. Nine, County of Shasta, State of California, came on regularly for hearing before the Honorable Marie C. [fol. 2] Mahon, on the 11th day of April, 1939. The defendant was present in court and was represented by counsel. Thereupon the following proceedings were had:

COLLOQUY

The Court: People vs. Carlson. Are you ready?

Mr. Carr: The People are ready.

Mr. Gladstein: Your Honor, there was a motion to dismiss the complaint and objections to the jurisdiction of the court, and also a demurrer to the complaint, all of which were filed in the case of People vs. Gladstein, et al. One of the defendants in that case was the defendant Carlson. Subsequently, by stipulation with the District Attorney, the case against Carlson was separated from the other defendants. Carlson waived his right to be tried by a jury; the other defendants in the case demanded a jury trial. This accounts for the present case taking place at this time, whereas the co-defendants of Carlson have yet to be tried before a jury at sometime in the future.

I would like the record to show, however, that the demurrer, motions and objections which were filed jointly and severally in behalf of all the defendants, including the defendant Carlson, in the case of People vs. Gladstein, et al., are preserved in the record in this case, and I will undertake to file new copies of such pleadings in the record here.

I assume that the record here may also record the fact that these motions, the demurrer and the objections have pre- [fol. 3] viously been argued to the court and were overruled. Is that satisfactory, Mr. Carr?

Mr. Carr: Yes. And may it also be stipulated that this is the time and place for the trial of People vs. John Carlson, and that the defendant waives any objections to the place of trial?

Mr. Gladstein: We will so stipulate.

The Court: Do you want the complaint read?

Mr. Gladstein: We will waive the reading of the complaint.

Mr. Carr: The first evidence introduced on the part of the people is a certified copy of the anti-picketing ordinance.

Mr. Gladstein: No objections. I assume that may be introduced in the evidence, your Honor, as People's Exhibit A?

Mr. Carr: It is so marked.

The Court: Admitted.

Mr. Carr: I now call Mr. Cibula.

Alvin M. Cibula, a witness produced and sworn for the people, testified as follows:

Mr. Carr: Your name is Alvin Cibula?

A. That is correct.

Q. On the morning of February 24th, were you called or directed to go to the Delta Tunnel Project in Shasta County?

A. Yes, I was.

[fol. 4] Q. And that is Township No. 9, County of Shasta?

A. It is.

Q. Will you state just what transpired on your arrival there?

A. This Delta Tunnel Project is located approximately 32 miles north of Redding. On the morning of February 24th, 1939, acting upon instructions from the District Attorney of Shasta County, I proceeded to the Delta Tunnel Project arriving at approximately 7:15 A. M. The project is a construction job conducted by the United Concrete Pipe Corporation, and its apparent purpose is to build a tunnel in connection with the re-location of the Southern Pacific Railroad. A main public highway known as U. S. Highway 99 runs near the project bearing generally north and south. The highway consists of a public right of way approximately 80 feet in width. The paved portion of this highway at or near the tunnel project is about 20 or 21 feet

wide. There is approximately 30 feet of ungravelled right of way at each side of the paved portion. The Delta Project is located approximately east of the highway. The project itself on this particular day was fenced in by a wooden fence running parallel with the highway and this fence is located a distance of 50 to 100 feet from the easterly line of the paved part of the highway. There is a gate through this fence for entrance and exit purposes. Shortly after my arrival on the morning of February 24th, workers who apparently——

Mr. Carr: (Interrupting). What time did you arrive?

[fol. 5] A. 7:15 A. M. I believe I stated that already. Workers began going through the gate and into the project grounds. It was my understanding that the belonged to an American Federation of Labor union. The work on this project at that time consisted of clearing away brush and the construction of wooden camps for the purpose of housing. At approximately 7:30 A. M., it might have been a little later, a group of 29 men in five or six automobiles came up from the general direction of Redding, parked their cars off the highway on public property which was not being used, got out of their machines and started picketing. The picketing of this group of men took place alongside the easterly line of the paved portion of the highway in the vicinity and in front of the Delta Tunnel Project. Several of the 29 men who were picketing carried banners. The defendant, John Carlson, was one of the 29 men. The picketing consisted of walking a distance of 50 to 100 feet in a general northerly direction, then turning around and retracing steps and continuing as before. As I said before, the defendant, John Carlson, was one of those who were picketing, and I might state at this time that all of the walking in connection with the picketing by the defendant and the others was done off the paved portion of the highway and on the gravelled portion of the right of way, that is, on public property. At approximately ten minutes to nine, Sheriff Sublett of Shasta County arrived with some deputies and proceeded to place all of the pickets, including [fol. 6] John Carlson, under arrest for picketing in violation of the ordinance.

Mr. Carr: Were these men carrying signs at that time?

A. They were.

Q. Members of this group were carrying signs?

A. Members of this group were carrying signs.

Q. And do you know what became of those signs?

A. Those particular signs were later impounded by the Sheriff and were kept in the Sheriff's office pending trial.

Q. And have you since seen those signs?

A. I have.

Q. And where are they at the present time? Can you identify them?

A. I can identify them. I understand they are in here.

Q. Will it be stipulated that these four signs were the signs being carried by members of that group on the 24th of February——

A. I beg your pardon. There are more signs; there are only four here.

Q. Yes. Well, it will be stipulated that these four were being carried——

Mr. Gladstein: Yes, I so stipulate.

Mr. Carr: We offer these and ask that they be marked People's Exhibits, I suppose you can call them B1, B2, B3 and B4. For the purpose of the record, is there any objection to Mr. Cibula's describing each of these signs?

[fol. 7] Mr. Gladstein: None whatsoever.

Mr. Cibula: There are four signs here which are representative of the signs carried. Each of them reads differently. The exhibit marked "B 1" reads: "Don't be a scab," in black letters painted on white cardboard paper. The cardboard is about 14 x 22 inches in size. The cardboard is tacked on to a stick which is 34 inches long, 1½ inches wide and ¼ of an inch thick. The cardboard is backed by two strips similar to the stick which carries this sign. The letters range in size from 2 inches in height to approximately 4½ or 5 inches in height. The exhibit marked Exhibit "B 2" reads: "Shasta Tunnel and Construction Workers Local #260". The letters are painted in black paint similar to Exhibit B 1 except that the letters range in height from 1½ inches to approximately 3 inches. It is on a stick similar to Exhibit B 1. The exhibit marked Exhibit "B 3" reads: "CIO Picket Line." The sign is similar to the other two signs except for wording and height of letters. The height of the letters on this particular exhibit is approximately 4½ inches. The exhibit marked Exhibit "B 4" is of the same size and description as Exhibit B 1 except that this sign reads as follows: "This Job Unfair to CIO." The

letters are black, painted on a white cardboard, and range from 3 inches in height to approximately 5 inches in height. I will identify those four exhibits as being some of the signs which were carried by the pickets on the morning of February 24th at the Delta Tunnel Project.

[fol. 8] Mr. Carr: Approximately how many of the 29 were carrying signs?

A. I would say approximately 10 or 12. I couldn't say for certain at this time.

Q. And this picketing, just exactly what part did those not carrying signs have in the picketing?

A. They walked along the so-called picketing area with those who were carrying signs. Generally two by two.

Q. Now, how were these signs displayed? Was it in a manner that they were being shown to the workers on the job?

A. They were carried in such manner that the signs could be seen both by the workers on the job and any person or persons who might be going along the highway in either direction. They were displayed in such manner that they could be seen from all angles at some time or other.

Q. Now at the time of this picketing, did you see the tunnel job itself from where you were?

A. Oh yes.

Q. And could you determine whether or not at all times there were workers working on the tunnel job?

A. As I remember it, there were a few men in the locality of the job when I arrived at 7:15 and immediately thereafter, there were more men arriving on the job who either walked down or drove down to the job in their cars from the highway through the gate.

Q. And there were men working on the job?

[fol. 9] A. There were approximately 30 men working on the job.

Q. And was there continuous traffic on the highway?

A. There was continuous traffic on the highway.

Mr. Carr: That is all.

Cross-examination:

Mr. Gladstein: Mr. Cibula, the signs which you have described and which are People's Exhibits B1, B2, B3 and B4, are all approximately of the same dimensions?

A. They are.

Q. Now the fence which you have mentioned as running parallel with the highway known as No. 99, and which surrounds the project grounds, that fence, I think you said, was about 50 to 100 feet east of the easterly line of the paved portion of the highway. Correct?

A. Yes. I am just remembering my impression at this time. I would not say that it was exactly any particular distance.

Q. No, well it isn't so much with respect to the distance but with respect to the next question. The men who were working on the job were working on the grounds at points east of that fence, isn't that so?

A. Generally east.

Q. Now, calling your attention to the defendant, John Carlson, it is true, is it not, that he did not make any loud or unusual or any noises at any time?

[fol. 10] A. That is correct.

Q. It is also true that he did not commit any disturbance of the peace?

A. That is true insofar as my observation is concerned.

Q. And did he trespass on private property?

A. He did not.

Q. And he did not, as far as your observation is concerned, threaten or intimidate or coerce anyone?

A. That is true.

Q. Isn't it a fact, also, that he did not carry or possess any weapons? That is correct?

A. Not that I could see. I believe it to be correct.

Q. Wasn't he searched after being arrested and as far as you know, no weapon of any kind was found?

A. That is correct.

Q. Is it not also true that in connection with his picketing, the defendant John Carlson did not obstruct the traffic of persons or automobiles along the paved portion of the highway?

A. That is correct.

Q. Or elsewhere for that matter?

A. That is correct.

Q. And in all of the activities of the defendant Carlson, is it not true that he was peaceable and orderly?

A. From the standpoint of demeanor?

Q. Yes.

A. From the standpoint of personal demeanor and personal actions, I saw nothing which would show any actual [fol. 11] disorderly conduct.

Q. There was no violence committed by the defendant Carlson?

A. There was not.

Q. Nor for that matter on the part of anyone else?

A. That is true.

Q. Did Carlson or any other picket molest or annoy anyone?

A. Insofar as my observation is concerned, no.

Q. And during all the time that you were there, no riot or disturbance of the peace occurred at any time during Carlson's picketing?

A. That is correct.

Q. Or by reason thereof?

A. That is correct.

Q. During the picketing, did you notice that persons and vehicles from time to time passed from the highway through the picket line to go to the job?

A. I did notice that.

Q. And these vehicles and persons passed freely from the picket line to enter into the job and also to make their exit from the job?

A. That is correct.

Q. And there was no physical or other molestation or interference on the part of the defendant Carlson or anyone else with any of the persons who wished to go to or leave from the job?

A. There was not.

[fol. 12] Q. So that isn't it correct that you would say that the defendant Carlson did nothing and committed no act which you would consider intimidating or coercive or threatening or violent, isn't that correct?

Mr. Carr: I object on the ground that this is an opinion and calls for the witness's conclusion.

Mr. Gladstein: Well, I will put it this way. All of Carlson's conduct that fell under your observation was considered by you to be for the purpose of persuading the A. F. of L. workers to leave their jobs?

A. That was the impression that I gained.

Q. Yes. Nothing that Carlson did was considered by you to be a violation of any state or county penal law other than the portion of the anti-picketing ordinance of this county upon which Carlson is now being tried?

A. That is correct.

Q. You were present, were you not, when the deputy sheriffs arrived and Carlson was placed under arrest?

A. I was.

Q. It is true, is it not, that Carlson offered no resistance to the arrest?

A. That is correct.

Mr. Gladstein: I think that is all.

Mr. Carr: Will it be stipulated that the Delta Tunnel Project, where other men were working, is a place of employment?

Mr. Gladstein: Oh yes.

[fol. 13] Mr. Carr: Well, that is all. The people rest.

Mr. Gladstein: Is it in the record, Mr. Carr, that all of the things that Mr. Cibula has testified to occurred within Township No. 9?

Mr. Carr: Well, that will be stipulated, I suppose.

OFFER OF MOTION TO DISMISS

Mr. Gladstein: Yes. Now I have no further questions. For the purpose of the record, I wish to offer now a motion to dismiss the action, which I now file and serve upon the District Attorney a copy. This motion, I may briefly state, reiterates all of the grounds contained in the motion previously filed in the action to dismiss upon the basis of constitutional and other legal grounds, and in addition raises the point that the evidence produced by the people, as a matter of law and for other reasons, requires dismissal of the matter. I will make no further argument at this time beyond urging that my motion be granted.

Mr. Carr: We would request or urge the Court that the motion be denied at this time on the ground that the decision of the Superior Court of Shasta County has previously denied the writ of habeas corpus on the ground that the ordinance is constitutional.

Mr. Gladstein: Has Your Honor ruled on the motion?

Mr. Carr: We would request that the motion of the defendant be denied at this time.

The Court: The motion just entered?

Mr. Carr: Yes, on the grounds as stated.

[fol. 14] The Court: Request granted. Motion denied.

JOHN CARLSON, a witness produced and sworn for the defendant, testified as follows:

Mr. Gladstein: Your name is John Carlson, is that correct?

A. Yes.

Q. And you are the defendant in this action?

A. Yes.

Q. Where do you live, Mr. Carlson?

A. 1283 California Street.

Q. In what city?

A. Redding, California.

Q. By occupation, what are you?

A. A miner.

Q. How long have you been such?

A. Well, I have been engaged in mining and quarry work and trap tunnel work since 1923.

Q. Now, the testimony of the People has indicated that you were peacefully picketing on the 24th day of February, 1939, in the vicinity of the Delta Tunnel Project. You recall that testimony, do you?

Mr. Carr: I object to that on the ground that the question as to peacefully picketing be taken from the question and that it be asked according to the actual evidence given.

Mr. Gladstein: I will withdraw the question. Simply directing your attention to the 24th of February, 1939, you [fol. 15] recall that you were in the vicinity of the Delta Tunnel Project?

A. I was.

Q. And what were you doing?

A. I was peacefully picketing at the time as Mr. Cibula stated in his testimony.

Q. And is it correct that your peaceful picketing covered a period of approximately from 7:30 to 9 o'clock?

A. Yes.

Q. Is Mr. Cibula's description of what you were doing and the manner in which you were walking substantially correct?

A. It is correct.

Q. State what your purpose was.

A. My purpose in picketing was to exercise my right to protest against being locked out of the job.

Q. Had you worked on that job previously?

A. I had worked on that job.

Q. When did you go to work on that job?

A. I was hired the 26th or 27th and told to come out and go to work.

Q. The 26th of what month?

A. Of January.

Q. Of January, 1939. And by whom were you hired?

A. Axel Carlson, Superintendent of that job.

Q. And pursuant to that, did you actually go to work?

A. Yes.

Q. And how long did you work on the job?

[fol. 16] A. Until noon of February 2nd.

Q. February 2nd?

A. Yes.

Q. What happened at that time?

A. The job shut down that day.

Q. Were the men laid off at the time the job was shut down?

A. Well, we were laid off, yes, but at that time there had been an attempt on the part of the contractors to force the men on the job to join the A. F. of L.

Q. What form did that attempt take?

A. Well, the attempt had been made by a man named Green. He was an organizer or business agent for the American Federation of Labor here in town, and he had been out to the job several times and had talked to all of the fellows on the job who were all miners—we were cutting brush at the time until we had cleared a place for a track so we could get a spur track in to get the work started.

Q. That preliminary work of cutting brush, is that always necessary?

A. It is necessary before you can commence your tunnel operations to clear your right of way.

Q. All right. Go ahead.

A. Well, an attempt had been made on the part of Mr. Green, who had been passing out buttons that had the words "I am a member of the A. F. of L."—so, of course, all the men working on the job, that is, the large majority of us [fol. 17] were all miners and we knew that the A. F. of L. at no time had ever organized construction work, or tunnel work, or tried to better our conditions, and the majority of us at one time or another had carried cards in the International Union of Mine, Mill & Smelter Workers, the only union we ever knew of that had ever organized construction

and tunnel work. So at noon, on February 2nd, the men on the job could see that there was an attempt on the part of the United Pipe & Concrete Company to force us into the A. F. of L. in the manner in which they were doing. In the manner in which Green was handing us these orders with the company's foremen standing around and letting this happen on company time. None of us had signed any cards to the effect that we would join the A. F. of L., and Axel Carlson had never said anything to me when he hired me that I would have to join the A. F. of L. to work on that job.

Q. How many men were working on the job, including yourself?

A. I think there were 29 men.

Q. What, if anything, did the 29 do on this subject of choosing a union?

A. Well, the men got together at noon time and we talked it over amongst ourselves in groups of, I think, seven, eight or ten of us in one group, and we got to talking about whether we were willing to be forced into the A. F. of L. or whether we would have the right to join a union of our own choosing. So we decided to hold a vote that day.

[fol. 18] Q. Did the men discuss this question of union affiliation before taking a vote?

A. Yes, we did.

Q. And did you take a vote?

A. We did take a vote.

Q. When did you take that vote?

A. At noon on February 2nd.

Q. Describe how that vote was taken.

A. Well, we all came over from where we had been working across the bridge over to the camp site, and we all talked it over and mentioned the fact that there was a Wagner Act and there was no reason why we should not exercise our right under that Wagner Act and choose our own collective bargaining agency.

Q. Did you finally participate in a vote to make your choice of a union?

A. We did vote, yes.

Q. Do you know the result of that vote?

A. Yes. There were 22 men for the CIO International Mine, Mill & Smelter Workers Union, there were 5 men who didn't vote, and 2 men that carried A. F. of L. cards. One was an engineer and the other, I believe, was a truck driver.

Q. Those two voted A. F. of L.?

A. They had A. F. of L. cards at the time. They stayed A. F. of L.

Q. So the vote was 22 to 2?

A. Yes.

[fol. 19] Q. When you say 22 men voted for the CIO, that 22 represented a majority of all men working on the job at that time?

A. Yes.

Q. What particular CIO union did the men choose, if any?

A. It was the Shasta Tunnel Workers Union, Local #260, affiliated with the International Union of Mine, Mill & Smelter Workers.

Q. Had there been any discussion among the men prior to taking the vote that they would abide by the results reached by the majority?

A. Well, we felt that the Wagner Act entitled us to make that decision in reference to what organization we should have represent us at that time, and we would go along with what the majority voted.

Q. Subsequent to the taking of the vote as you have described it, did you ask, through Local #260, that the United Concrete Pipe Corporation bargain collectively with you men on the job through your representative?

A. Yes, that was done and we joined the union.

Q. Did you join the union immediately after taking the vote?

A. Well, I had a delinquent card and got reinstated.

Q. After they made their choice, did the others join the CIO and ask the CIO to bargain for them?

A. Yes, we all joined the CIO and asked Local 260 to bargain for us.

[fol. 20] Q. Was the company requested by Local 260 to bargain collectively concerning Union recognition, and conditions of employment for you men on the job?

A. Yes, that was done.

Q. With what result, if you know?

A. The company refused to bargain.

Q. With whom?

A. With Local 260, our representative.

Q. After the 2nd of February, I believe you said the job was shut down. Correct?

A. Yes.

Q. Why?

A. Due to weather conditions.

Q. It was re-opened later, was it not?

A. Yes.

Q. About a week later?

A. I believe it was a week later.

Q. Were you men called back to work?

A. No, we weren't.

Q. Subsequently the job was again shut down, that is true, isn't it, at the request of the Governor of the State?

A. I believe it was.

Q. And it remained shut until approximately the 23rd of February?

A. Yes.

[fol. 21] Q. And on the morning of the 23rd of February, the job re-opened, the day before you picketed?

A. I couldn't say what date for sure.

Q. What is your best recollection?

A. The 23rd of February, yes, that's right.

Q. And when the job re-opened on the 23rd of February, it re-opened with men belonging to the A. F. of L.?

A. Yes.

Q. And none of the men who had voted CIO and who had been working on the job at the time the vote was taken were called back to work?

A. I believe they were later sent letters and the letters said they could come back to work on the understanding that they joined the A. F. of L.

Q. On the 24th of February, then, you proceeded to go out there and picket, correct?

A. Yes.

Q. And was your picketing peaceful in all respects?

A. Absolutely. There were trucks and men going back and forth through the fence at all times and there was no attempt to stop them in any way.

Q. Do you know whether or not charges were filed against the United Pipe Concrete Corporation with the National Labor Relations Board by reason of its refusal to bargain with the representative for the majority of men?

Q. Yes, those charges were filed by myself and I believe [fol. 22] one of the officials of the union.

Q. I think I have copies of those.

(Copy given to Mr. Carr.)

Mr. Carr: We will stipulate that these copies of charges before the National Labor Relations Board may be offered in evidence on the condition that within two weeks certified copies be substituted before the Court, and, in the event they are not, they will be declared inadmissible.

Mr. Gladstein: That is perfectly satisfactory and I will undertake to obtain in lieu of the copies I now have certified copies at a later date but, in the meantime, I will ask Mr. Carlson to identify the document which I now have purporting to be a copy of the charge brought by Shasta County Local #260 against the United Concrete & Pipe Company on the 4th day of February, 1939, and I will ask you to state, Mr. Carlson, whether that is, to your best knowledge and belief, a true and correct copy of a charge on file with the Labor Board and a true and correct copy of what it purports to be.

A. It is.

Mr. Gladstein: I will offer that in evidence as defendant's Exhibit No. 1, Your Honor. May it be admitted subject to the conditions stated by the District Attorney?

The Court: The record may show that the document is admitted.

Mr. Gladstein: I now show you an amended charge dated the 11th day of February, by the same union against the [fol. 23] same company, filed before the National Labor Relations Board. I ask you to examine it and state whether it is a true and correct copy of what it purports to be.

A. It is, yes.

Mr. Gladstein: I offer it in evidence as defendant's Exhibit No. 2.

Mr. Carr: Subject to the same conditions, it may be admitted without objection.

The Court: Admitted.

Mr. Gladstein: Now, Mr. Carlson, this project, this Delta Tunnel Project, is being performed or is being worked under a contract with the United States Bureau of Reclamation?

A. To my knowledge, yes.

Q. And it involves the construction of a tunnel, is that true?

A. Two tunnels.

Q. And its purpose is to re-locate a main Southern Pacific Railroad line?

A. Yes.

Q. Is it not true, to your knowledge that the re-location of this railroad line is made necessary as a result of a project, in connection with the Central Valley Water Project in this state, to make the Sacramento River navigable clear up to the city of Redding?

A. I believe it is, yes.

Q. And there is also in connection with this a project to [fol. 24] build a Shasta Dam. All that is tied in together?

A. Yes.

Q. Now, this surface work which you and the others were performing at the time you were working on the job, is it true that this work first began on January 26th, 1939?

A. I believe it was the 26th.

Q. And it lasted until February 2nd, I think you said. Then came the vote and the shut-down of the project. Is that true?

A. Yes.

Q. Now just what did this surface work consist of? Will you describe that?

A. Well, there is usually a large amount of brush and trees that have to be cleared off of the land before they can start putting shovels in there to level it off, and we were cutting these trees and brush down so they could get shovels in there and level it off for a railroad spur.

Q. And what was the purpose——

A. They wanted to get equipment in there so we could start tunnel operations.

Q. During all of the time that you were picketing on February 24th, did you threaten anyone?

A. No.

Q. Or intimidate or coerce anyone?

A. No.

Q. Or attempt to?

A. No.

[fol. 25] Q. Did you commit any violent act?

A. No.

Q. Any disorderly act?

A. No.

Q. Any act which was not peaceful?

A. No.

Q. Did you do any shouting?
A. No.
Q. Did you make any loud of other noises?
A. No.
Q. Did you make any gesture of threat or intimidation?
A. No.
Q. Did you use any insulting or lewd or abusive language?
A. No.
Q. Did you carry any weapons?
A. No.
Q. Did you obstruct anybody who was passing along the highway?
A. No.
Q. Did you obstruct anyone who wanted to go through the picket line to the job?
A. No.
Q. Or anyone who wanted to go through the picket line from the job?
A. No.
Q. Is it not true that men went freely through the picket line to and from the job?
[fol. 26] A. Yes.
Q. Is it not true that trucks drove in and out of the project grounds in connection with which they drove through the picket line?
A. Yes.
Q. Is it not true that these trucks and men were in no way obstructed or molested?
A. That's true.
Q. Was there any violence on your part or by anyone else?
A. No.
Q. Any rioting?
A. No.
Q. And that would be true during all the time of your picketing?
A. Yes.
Q. You hoped, did you not, that by reason of your picketing, one or more of the men who were working on the job would leave it?
A. I did.
Q. You hoped that others who might be coming up to get a job and seeing your picket line would refuse to take a job?
A. Yes.

Q. You hoped that people who might be passing by would notice the picket line and come to the conclusion from the publicity given by the picket line that the Delta Tunnel Project was unfair to organized labor?

[fol. 27] A. I did.

Q. Were those your purposes in picketing?

A. They were.

Q. You also desired, I assume, to have your job back?

A. I did, and still do.

Q. Do you know whether any of the A. F. of L. men did walk off the job as a result of your picketing?

A. Well, I couldn't say for sure, but I believe that one man walked off the job as a result of the picketing.

Q. You understand that at least one of the A. F. of L. men who were working on the job, whether as a result of your picketing or not, you are not sure, but at any rate voluntarily walked off the job?

A. Yes.

Q. Did you have any intention of making use of any banners for other than publicity and persuasion purposes?

A. That was all.

Q. You had no intention of making use of them as a weapon?

A. No.

Q. Nor did you at any time use any banners for weapons?

A. No.

Q. Nor did any of the other pickets do so?

A. No.

Q. In connection with the picketing, is it true that it consisted simply of walking back and forth along the side of the paved portion of the highway?

[fol. 28] A. Yes.

Q. In picketing, you didn't go on the paved portion?

A. No.

Q. You and all the other pickets kept on the graveled portion?

A. Yes.

Q. The graveled portion is not customarily used by automobiles, and as far as you know on that particular morning of the picketing, no automobiles were using the graveled portion?

A. That is correct.

Q. In other words, the traffic passing by used the paved portion?

A. Yes.

Q. And is it correct, as Mr. Cibula testified, that you would walk a distance of 50 to 100 feet in a northerly-southerly direction, generally speaking, and turn around and repeat that procedure in the other direction?

A. Yes.

Q. Was there space between the pickets as they performed their picketing operations?

A. Yes, we were spaced apart from each other, probably six feet or more between us.

Q. At the time of the picketing, you were and had become a member of Local #260?

A. Yes.

Q. And the others who were on the picket line included [fol. 29] men who had worked with you on the job before the shut-down on February 2nd and also officials and other leaders of the union, is that correct?

A. Yes.

Q. Do you recall whether you were carrying a sign that morning?

A. I believe I carried a sign, yes.

Q. Do you remember which one?

A. I think that one about being unfair to the CIO.

Mr. Gladstein: For the purpose of the record, let us refer to Exhibit B 4.

Mr. Carr: For the People?

Mr. Gladstein: Yes. The picketing that you participated in was conducted, then, between the paved portion of the highway and the fence which surrounds or includes the project itself.

A. Yes, off the pavement.

Q. Not on private property?

A. Not on private property?

Mr. Gladstein: That is all.

Cross-examination.

Mr. Carr: Now, Mr. Carlson, you stated that on the day of February 2nd, a vote was taken and that the job was shut-down on that day by the contractor?

A. Yes.

Q. On account of the weather conditions?

A. Yes.

[fol. 30] Q. Now, where did you go immediately upon the shutting down of the job on that day?

A. Well, I couldn't say; I believe I came into town. No, I lived out there; I stayed out there; I was living at Midway Service Station.

Q. Did you stay around the job at all?

A. I lived just two miles from the job.

Q. Were you there at any other time?

A. Back on the job?

Q. At the place of the job.

A. No, we left right after noon.

Q. Did you know that the A. F. of L. sent a group of men out there after the job was shut down?

A. No, I don't believe I did.

Q. Did you know that there were a group of CIO men who went there to protest?

A. That day? No.

Q. There has been some evidence on the Central Valley Project. Would the defendant like to stipulate as to come general facts regarding that?

Mr. Gladstein: What are they?

Mr. Carr: That the Shasta Dam is a project involving an expenditure of approximately thirty-five million dollars and that it was to be constructed in Shasta County within the next five years.

Mr. Gladstein: I will stipulate to that.

[fol. 31] Mr. Carr: And that there are now being constructed, as part of that project, four tunnels on the railroad re-location and for the purpose of—do you want to identify those tunnels by name?

Mr. Gladstein: I don't think that is especially material but I have no objection if you describe for the record just what that project is.

Mr. Carr: Alright now, Mr. Carlson, you stated that the job, some time after the 2nd of February and prior to the 23rd or 24th of February, when the picketing took place, was shut down by the Governor, at least that was your information?

A. Yes, that is to the best of my knowledge.

Q. Or at the request of the Governor of California?

A. Yes, I was at a conference in Sacramento when the Executive Secretary of the Governor requested the A. F. of L. officials and the contractor (and their attorney) to shut the job down until some sort of arbitration was arrived at.

Q. Well, for what purpose? Wasn't it shut down because there was a dispute between the A. F. of L. and the CIO over the jurisdiction on that job, is that right?

A. Well, you see, the men who voted CIO never got back on our jobs, the company claimed it would only take men from the A. F. of L. But that was after we took the vote. After we voted CIO, we were not allowed to work there anymore. We were locked out of the job. Then the contractor arranged to have A. F. of L. men on the job, and [fol. 32] the Governor got the contractor to remain shut down, but the arbitration fell through. So when the contractor opened up again with different men, not letting us have our jobs, why then we put the picket line on.

Q. Do you know why the job was shut down, why it became necessary to shut the job down?

A. Well, just like I said, that's all I know.

Q. You have no knowledge as to why that was——

Mr. Gladstein (Interrupting): Wasn't that in connection with an attempt to arbitrate an agreement which had been drawn up but never agreed to? I was in those conferences and as I remember it, the purpose of having the status quo remain was so that there could be an attempt to arbitrate the matter. I cannot prove that by this witness—that the A. F. of L. claimed it had a contract which was executed on the 28th of January. However, by a subsequent witness, I will introduce that into evidence and what the dispute was about.

Mr. Carr: The only thing I want is that the defendant is familiar with the whole dispute that went on there, and I think you know, as a matter of fact, that there had been some trouble on the job prior to the conference with the Governor.

A. Well, I don't know. I wasn't in town. I was down in 'Frisco at the NLRB filing my charges.

Q. But prior to that time had there not been groups of men congregated at the Delta Tunnel job?

A. I couldn't say because I was never out there after the day we were discharged until I went on the picket line.

[fol. 33] Q. Now you stated that trucks drove through the picket line, is that right?

A. Well, I couldn't say through the picket line because we gave them plenty of room to go through. We didn't block the road in any way.

Q. But the path that your picket line followed was across the line where the trucks were going through?

A. Yes, but men and trucks both went through.

Q. Have you served in any picket line before?

A. No.

Mr. Carr: I guess that is all.

Mr. Gladstein: Just one question on these trucks that went through, or passed the picket line. I think we should have that straight in the record. There is no well-defined paved roadway from Highway No. 99 to the project, is there?

A. No. It is just a graveled dirt path.

Q. And in the walking that you did, you walked near and perhaps over and across that path?

A. Yes.

Q. As a matter of fact, there are several paths, aren't there? Several entrances by pathway to the gate that leads to the project?

A. I believe there is, yes.

Q. And is it true that at no time during any of the picketing that morning did you or anybody else in any way hold up any traffic or person who wanted to go into or leave from the project?

[fol. 34] A. That is true.

Q. They had free passage, unobstructed?

A. Yes.

Mr. Gladstein: That is all of this witness. May it be agreed by stipulation that the Carlson case will now be adjourned two weeks from now, ten o'clock, April 25th, for the putting on of further testimony by the defendant?

Mr. Carr: That is satisfactory.

The Court: The case will be recessed, then, until 10 a. m. on April 25th.

[fol. 35] Friday, April 28, 1939, 10:00 A. M.

The Court: In the case of People vs. Carlson, are you ready on both sides?

Mr. Carr: The People are ready.

Mr. Gladstein: The defendant is ready.

Mr. Carr: I think we might stipulate, if you will, that this is the time and place for the continued trial.

Mr. Gladstein: So stipulated. I will now call Mr. Weise.

JOHN WEISE, a witness produced and sworn for the defendant, testified as follows:

Mr. Gladstein: What is your true name?

A. John Weise.

Q. Will you please state where you reside?

A. Central Valley.

Q. What is your business or occupation?

A. Laborer.

Q. You are, and for some time have been a member of the International Union of Mine, Mill and Smelter Workers, is that correct?

A. Yes.

Q. And were you in January and February of 1939 associated with Local 260 of that organization?

[fol. 36] A. I was.

Q. Now, I want to refer to the exhibits of the defense, Exhibits One and Two, which were offered and admitted in evidence at the previous hearing with the understanding that there would be substituted certified copies of these exhibits. These exhibits are copies of charges filed with the National Labor Relations Board. Mr. Weise, I show you what purports to be a certified copy of a charge of unfair labor practices, entitled "An Amended Charge", and dated February 11, 1939. This document purports to be signed by you as Secretary of the Shasta Tunnel Construction Workers Union, Local 260. Please examine this document and state if it is a true and correct and certified copy of an original document signed by you.

A. Yes, it is.

Q. I offer it in evidence at this time in place of the document entitled and numbered "Defendant's Exhibit Two in Evidence". I have an extra copy for you, Mr. Carr (handing document to Mr. Carr).

Mr. Carr: No objection.

The Court: The document just referred to may be received in evidence in place of the document for which it is being substituted. It will take the same exhibit number, Defendant's Exhibit Two.

Mr. Gladstein: Now, Mr. Weise, is it correct that in January and February of this year you were the Secretary [fol. 37] of Local 260?

A. Yes.

Q. As Secretary, did you have in your custody and care certain books of the union?

A. Yes.

Q. Including membership books?

A. Yes.

Q. And written applications for membership?

A. Yes.

Q. State whether or not, about February 2, 1939, applications for membership in Local 260 were made by men employed by the United Concrete Pipe Corporation at the Delta Project job.

A. Yes, there were.

Q. Do you remember approximately how many such applications for membership were made?

A. I believe it was nineteen or twenty, in the neighborhood of nineteen.

Q. Can you state whether the number of men applying for membership at that time, that is, men who worked on the Delta Project, whether that number constituted a clear majority of all the workers employed on that particular project?

A. Yes, it was a large majority.

Q. Were these applications made in writing by the men?

A. Yes.

Q. Were they signed by the men?

[fol. 38] A. Yes.

Q. What did the signed applications provide?

A. The application was the usual form for applying for membership in the union, and also designated Local 260 as the exclusive collective bargaining agency for every man who signed the application.

Q. Pursuant to these written and signed applications and designations, did the union take any action with respect to requesting collective bargaining from the employer?

A. Yes, that was done.

Q. What action did the union take?

A. There were three representatives of the union who attempted to contact the United Concrete Pipe Company with a view toward establishing contractual relations between the corporation and the union.

Q. Who were these three representatives of the union?

A. John Walker, the Secretary of the Tunnel Construction Workers Organizing Committee; Ray Livingston, In-

ternational Executive Board member of the International; and John Morgan, International representative.

Q. State, if you know, what the Tunnel Construction Workers Organizing Committee is, and its relationship, if any, to the International union.

A. It is an organizing committee composed of unions affiliated with the International Union of Mine, Mill and Smelter Workers, and is engaged primarily in organizing [fol. 39] tunnel construction workers. The Tunnel Construction Workers Organizing Committee is subsidiary to the International Union of Mine, Mill and Smelter Workers, but is a superior organization to the individual local unions. It is comparable to a point council of local unions operating in a particular district.

Q. That is, a sort of body or medium through which various local unions situated in different localities can jointly act. Is that true?

A. Yes.

Q. Now, before the union asked the employers to negotiate a contract for the men employed on the Delta Project, was there discussion with the men with respect to demands, if any, that should be made on the employers?

A. Yes, there was a series of demands, or rather a more or less standard form of contract which was discussed.

Q. Did your proposed contract embody the desires and demands of the men on the job?

A. That is right.

Mr. Gladstein: I think that is all. You may cross-examine.

Mr. Carr: No questions.

The Court: The witness may be dismissed.

JOHN MORGAN, a witness produced and sworn for the de- [fol. 40] fendant, testified as follows:

Mr. Gladstein: What is your residence, Mr. Morgan?

A. Ramona Hotel, Sacramento.

Q. And your occupation?

A. International representative of the Mine, Mill and Smelter Workers Union.

Q. Is that an official position?

A. It is.

Q. I show you what purports to be a certified copy of an original charge of unfair labor practices filed with the National Labor Relations Board, bearing the date of February 4, 1939, brought by the Tunnel Construction Workers Organizing Committee against the United Concrete Pipe Corporation, and purporting to be signed by yourself as International representative. Please examine this document and state whether it is a true and correct copy of an original document of similar nature signed by you.

A. Yes, I signed this.

Q. Is it a true and correct copy of the original document signed by you?

A. It is.

Q. To your knowledge, was the original filed with the National Labor Relations Board, Twentieth Region, in San Francisco?

A. Yes, it was.

Q. May this document, Your Honor, which the witness [fol. 41] has just identified, take the place of Defendant's Exhibit Number One? Here is a copy for you, Mr. Carr (handing copy to Mr. Carr).

The Court: It may be admitted as Defendant's Exhibit Number One.

Mr. Gladstein: Now, Mr. Morgan, in your official position did you play any part in attempting to obtain collective bargaining from the United Concrete Pipe Corporation after a majority of its employees had voted to be represented by Local 260?

A. Yes. After the United Concrete men had signed application cards and after the vote was taken, I, along with several of the members of the union, attempted to contact Mr. Bell, who is an official, I believe the Treasurer, of the United Concrete Pipe Corporation. I talked with Mr. Bell on the telephone and he refused to meet with our committee. He refused to listen to our request altogether.

Q. What exactly did you ask Mr. Bell to do?

A. I told Mr. Bell who I was and that his employees on the job had taken a vote and the majority had selected our union as their bargaining representative. I told him that these men had signed up in our union and we wished to negotiate with him for a contract on the job. But he would not listen to us.

Q. Did he give any grounds for his refusal?

A. As I recall, he stated that the company was going [fol. 42] to deal with the American Federation of Labor and the fact that the nineteen or twenty men from the United job were signed up with the Mine, Mill and Smelter Workers Union was not going to change the situation. In the telephone conversation I made a point of telling him that the men on the job had designated the Mine, Mill and Smelter Workers Union as their collective bargaining agency and desired to have the union represent them with the company, and desired to negotiate a contract. Mr. Bell was very firm in refusing, and stated that business was going to be done with the American Federation of Labor, notwithstanding the fact that his men belonged to the Mine, Mill and Smelter Workers Union.

Q. The Mine, Mill and Smelter Workers Union is now, and during all the time that you are talking about was, affiliated with the Congress of Industrial Organizations, is not that correct?

A. Yes.

Q. So it is correct that no meeting was ever held at which negotiations took place between Local 260 for the men on the Delta job, and any representative of the Company?

A. No meeting was held with the officials of the United Concrete Pipe Corporation prior to the time that a picket line was established on the Delta Project for the first time. I don't recall the exact date but I think that it was back in February sometime, yes, February, when we established our picket line for the first time. It was then that several [fol. 43] conferences were held here in Redding in the office of Senator Carter.

Q. Now at these meetings in Senator Carter's office, did representatives of Local 260 renew their demand for collective bargaining with the company?

A. Yes, and also on many other occasions.

Q. With what results?

A. We were turned down every time.

Q. Directing your attention to February 24th, which is the day when the defendant Carlson was arrested for picketing at the Delta Tunnel Project, was there just prior to that date a meeting or several meetings of the union membership at which the question of picketing the job was discussed?

A. The question of picketing the Delta job was discussed at several union meetings and was also discussed at separate meetings of the men from the Delta job, along with certain

members of a Strategy Committee composed of union members.

Q. To refresh your recollection, it has been the testimony that the job was re-opened with American Federation of Labor men on February 23rd and that picketing began on the following day, that is, February 24th. Were you present when the question of establishing a picket line on that job was discussed, that is, just prior to the 24th?

A. I was.

Q. Where did that discussion take place?

A. At the union hall.

[fol. 44] Q. Who generally participated in the discussion?

A. The men, the union members.

Q. Was it then decided to place a picket line on the job the following morning?

A. Yes, it was decided at that time.

Q. What was the purpose of placing such a picket line on the job?

A. Well, the purpose in establishing the picket line was this. The Mine, Mill and Smelter Workers Union had been successful in organizing a majority of the men who were working on that job. These men had signed cards, C. I. O. cards, appointing the Mine, Mill and Smelter Workers Union to represent them in collective bargaining, and the company had been contacted and had refused to give our union any consideration as far as our right to be recognized as the bargaining agency was concerned. In view of this fact and the further fact that the company re-opened the job and put other men to work at the time the vote was taken, it was the intention of the union to establish a peaceful picket line on the Delta project, and the purpose of the picket line was this. A two-fold purpose. First, by means of a peaceful picket line to advertise and show to the men that the company had put to work on the job and who were therefore in a position of being strike-breakers, to advertise to them the fact that the job was unfair, and endeavoring in this manner to peacefully persuade these men not to work on that job. And the second purpose was to advertise the [fol. 45] conditions of this particular job to the public at large, to the American Federation of Labor people in general throughout the community, to the citizens generally of Shasta County, and in fact to the people of California generally, and specifically to the State Administration. Now, I might also add that the union itself was not in

a very good financial state and it was forced naturally to take the traditional step of peaceful picketing to advertise the job as unfair. We were not in any position to run ads in the newspapers or take any other expensive means of publicizing our case, and we felt that if we established a peaceful picket line out there on the job, why then the tunnel miners, the construction stiffs, would not go through a peaceful picket line. We felt that they would not want to work on a job that was unfair due to the fact that the tunnel men in general have always been in favor of organized labor. We also felt that if the people of Redding and the people of Shasta County and of the state generally recognized the state of affairs in connection with this job, why then some justice would be done, some action would be forthcoming from the State Administration to rectify the injustice that had been done to the men who were locked out on the sole ground that they had freely chosen their own collective bargaining representative, which the employer did not happen to like.

Q. Has it been your experience in the trade union movement, and as far as you know, the experience of others, [fol. 46] that there are many working men who will not take a job if they know it has been declared unfair to organized labor, that is, if they know that a union affiliated with organized labor has declared the job to be unfair?

A. Yes, that has been my experience and I know that it has been the experience of most people in the trade union movement. In this particular situation, the picketing was based on the fact that the contractor attempted to work the job with strike-breakers. If the contractor had not attempted to use strike-breakers, but had closed down the job and allowed it to remain closed, then of course there would possibly be no reason to establish a picket line out there. Inasmuch as the contractor did work the job, did use strike-breakers, then it became necessary for the union to take the necessary steps of advertising the state of the job to the men who were working there and likewise for the purpose of informing men who might be coming there to go to work and who would not know the conditions on the job unless they were apprised through the picket line.

Q. Has it been your experience, Mr. Morgan, as a union official, and to your knowledge the experience of others in the trade union movement, that there are many men who will not intentionally accept work if they know that the

work offered them has been pronounced unfair to organized labor?

A. Yes. I would say very much so.

Q. Was it partly, at least, the purpose of the picket line [fol. 47] to apprise such men, if any there might be, so that they would not take the jobs that were offered them?

A. Yes, that was one of the purposes of the picket line, to show men who might be coming to the job that it was an unfair job, and also for the purpose of persuading men who were already working on the job not to work it.

Q. Have you had contact with large sections of workers in the trade union movement?

A. Yes, I have had very extensive contact over a considerable period of time and it has been my experience that if you have a job which is on strike or where a lockout is in progress and the employer is attempting to work the job, if you do not have a peaceful picket line there, then the chances are greatly enhanced of men going and accepting jobs who would not work the job if a picket line was established there as a means of demonstrating to them that the job is unfair.

Q. Do I understand you to say that such men accept the job simply because they lack knowledge of the fact that the job has been pronounced unfair?

A. Yes, that is exactly the point. Unless a picket line is established on the job the union generally has no practical method of letting potential workers know the true conditions, and therefore when there is no picket line on the job many men go to work without knowing what the conditions happen to be. These same men, many of them, if they saw a picket line there, would not want to accept the job. [fol. 48] Q. Based on your experience, would you say that these men who will not go through a picket line when they see one, react in that manner because of fear for their safety or because they prefer trade unionism and the principles of trade unionism?

A. I don't think they react that way from fear at all where a picket line has been established. In general, I think that the working man is very definitely in favor of organized labor. There are certain exceptions, no doubt, but in general, they are in favor of organized labor and if the matter of an unfair job is brought sharply to their attention by a picket line, then the probabilities are that

many, many working men simply will not want to go through the picket line. It is simply a case of one worker not wanting to scab on a fellow worker, because he realizes that it would amount practically to stealing the bread out of another worker's mouth.

Q. In other words, the man who sees a picket line, feels a basic kinship with the men on the picket line, and this kinship is brought out by the picket line, is that correct?

A. Yes.

Q. Now, you say that one of the purposes of your picket line on February 24th was to acquaint the public with the fact that a labor dispute was in existence. Drawing on your own experience, Mr. Morgan, would you say that where labor disputes occur, as in this case, that many of [fol. 49] the outside general public do not know of the existence of the dispute, or if they do happen to know that a dispute exists, they do not know the issues? Would you say that is the case?

A. Yes, unfortunately, that is very true.

Q. What has been your experience in that connection?

A. In a general way it has been the experience of probably all trade union leaders, it has certainly been my experience and that of many others I know, that one of the hardest problems a union has to face is to acquaint the public generally with the issues of a particular dispute. For example, in this particular United Concrete job, we felt it extremely necessary to place the case before the public if we were going to be successful in winning the rights of the union men concerned, and to do this we felt that one of the most necessary steps to take was the establishment of this peaceful picket line, for in this way the story would be brought home to the people generally.

Q. To your knowledge, did the contractor in this particular case give his side of the dispute through the newspaper columns and elsewhere to the public?

A. Yes, to a certain degree he did.

Q. Has it been your experience generally in cases of labor disputes that employers make use of the advertising columns of the newspapers and other types of propaganda to give their side of the controversy?

A. I know in general that this has been the case to a [fol. 50] large degree. It has been true of many disputes in the San Francisco Bay area where the employers have made very widespread use of the advertising columns of

newspapers and also of radio time. And unfortunately the unions have not been able to take the same action with either newspapers or radio but have in general been forced to resort to other and less expensive means.

Q. Such as what?

A. Placards and picket lines, mostly.

Q. In the last analysis, then, would you say as a general rule that the use of cardboard placards and peaceful picket lines constitute about the only practical methods whereby a union can meet the publicity, often high-powered, of the employers?

A. Yes, I would say that placards, picket lines, and distribution of handbills are the only practical methods open to the unions, and the most fundamental and most practical is the picket line, because this not only serves to notify the public at large but also is the only practical method of notifying men who otherwise might become strike-breakers.

Q. Was that substantially the situation in the United Concrete dispute, that is, with respect to the methods of publicity which, from a practical point of view, were open to the union?

A. Yes, it was.

Q. You say that one of the reasons that unions want to [fol. 51] picket and one of the reasons that you in this particular case wanted to picket, is that you want the public to be acquainted with the facts. Is it considered by organized labor today that public opinion is important in influencing the outcome of labor disputes?

A. Yes. It is considered to be a problem of the utmost importance, and in our particular situation unquestionably it was. As a matter of fact, I would say that not only is it important to win over the opinion and sympathy of the working man generally, but also the opinion and sympathy of the businessman and the general citizenry in the county. We know from experience that where unions are unable to impress the justice of their case on the community at large, and in some cases where employers have whipped up hysteria through falsifying the issues, that union men have been very badly treated through the formation of so-called citizens' groups and back-to-work movements, and even in some case vigilante movements. In the United Concrete situation we felt that public opinion was a very important factor on the question of whether or not we would win.

Q. Now, on the question of strike-breakers or potential strike-breakers. I think you said that one of the reasons you wanted to advertise your side of the case by a peaceful picket line was to influence such a group through logic and reason. Is that correct?

A. That is correct.

[fol. 52] Q. To achieve the objective of their not going through the picket line?

A. Yes. We know that in many cases strike-breakers are brought in from outside areas and in other cases local people are brought into the controversy, and although there is a certain class, a certain minor class who are professional strike-breakers and are so used through ignorance of the true situation usually, although the professional strike-breakers are not usually subject to peaceful persuasion, still where the case is not one of professional thugs and strike-breakers at all but on the contrary local people or outside people who have been brought in through advertising but who would not want to scab on workers, a certain percentage of such people would definitely refuse to take on strike-breaking activities if a picket line was on the job.

Q. What has been your experience, Mr. Morgan, as to whether a close relationship exists between the employer who will use strike-breakers and the employer who refuses to bargain collectively with the chosen representatives of his workers.

Mr. Carr: Object on the grounds it calls for the conclusion of the witness.

Mr. Gladstein: It is asking for his experience.

Mr. Carr: We have been allowing him to state his opinions and conclusions on a lot of these things. While I don't think a lot of it matters, he has nevertheless stated his opin-

[fol. 53] ions and conclusions. Probably some of it is true, but here is a question I don't think anybody will be expert enough to be able to give a correct conclusion on. That is a matter of great dispute.

Mr. Gladstein: Well, is it not true that in the particular case of the Delta job the contractor both refused to bargain collectively and attempted to use strike-breakers?

A. Yes, he refused to bargain with the men, or rather with the duly chosen representatives of the men, and he also went ahead and worked the job with what we considered to be strike-breakers.

Q. Now you stated that one of the reasons you decided to picket was that that was the only practical method within your means of publicizing your side of the case. Was consideration given to the factor that being on a picket line tends to stimulate and maintain the morale of the locked-out workers during the course of the labor dispute?

A. There is nothing that kills a strike so quickly as inactivity or lack of planning in connection with a strike, and the fact that the men on strike or who have been locked out are actually out there on the grounds, part of a peaceful picket line, and actively engaged in presenting their case to the public and to the men who are working on the job, serves as a very great stimulant to the morale of the union. As a matter of fact without that kind of stimulant, why any union is under a serious handicap.

[fol. 54] Q. In other words, it is a matter of keeping up the spirit of the men themselves and of activizing the men so that they individually and personally carry on their struggles instead of taking the dictates of somebody higher up. Is that correct?

A. That is right. I might even say that activity on the picket line for union men is one of the most important ways by which democracy is carried out in practice, because the men are naturally taught by this kind of experience to be self-reliant and to actively participate in the carrying on of their own struggle, participating in making their own decisions on matters of policy, and so on.

Q. In determining to place a picket line on the job, Mr. Morgan, did you give consideration to the fact that men on the picket line in broad daylight where they can be seen clearly by anyone, including peace officers, are less likely to commit acts of violence?

A. I believe from experience that men on a peaceful picket line, particularly in the circumstances that were prevailing on the Delta job, are less inclined to violence than if there is no picket line, or rather if the men are prevented from establishing a peaceful picket line. You see, in a strained situation of this type——

Q. (Interruptin-). Did you say strained?

A. Yes, strained. In a strained situation of this type, if there is no picket line, the men are loose, they are left to [fol. 55] themselves as individuals, without any direction, more or less free to do what they feel, and naturally the chances of violence, individual violence, are increased. On

the other hand, if they are on a picket line, acting collectively, where each individual bears a certain amount of responsibility to the rest of the group not to break discipline, and where they are under the control of picket captains who have been chosen by the men themselves and therefore have the respect of the men, then the possibility of violence on the picket line is absolutely minimized so that there is very little chance of its occurrence.

Q. Now this testimony that you have just given was intended primarily, I take it, to apply to the labor dispute at the Delta Project?

A. Yes.

Q. Would you say that these points which you have just brought out relative to the Delta dispute are typical of labor disputes generally, or is it otherwise?

A. I would say that the things I have described and the fundamental factors which have been brought out concerning this particular case are absolutely typical of the general labor dispute.

Q. To what extent would you say that the concurrence of the use of strike-breakers and the refusal to bargain collectively, as in this case, was typical?

A. Here we had a case where a contractor refused to [fol. 56] recognize the bargaining agent designated by the majority of the men, he simply refused to listen to their demands, and further than that, he went ahead and worked the job with strike-breakers. I would say from experience that this is a very usual situation with employers who refuse to accept the process of collective bargaining. This kind of case has undoubtedly been duplicated many hundreds and even thousands of times. The kind of employer who refuses to recognize a union is usually the one who will bring in strike-breakers, and of course the only effective answer on the part of the workers when an employer resorts to this kind of procedure is to establish a picket line.

Q. Getting back for a minute to the question of those instances where violence does occur on the picket line or near a picket line or in connection with it. As far as the union is concerned, does it attempt to prevent violence or is its attitude on the subject passive?

A. The union does attempt to prevent violence, in fact it generally takes very great precautions in order to maintain peace and order on the picket line. We know from experience that the public will turn against us very sharply if

our picket lines are not peacefully conducted. For this reason we are most careful to prevent provocateurs which may have been sent into the union by the employer from trying to stampede the men on the picket line into violent conduct. Now, I might say in connection with the Delta job, that very [fol. 57] strict and very efficient precautions were taken to insure that this would be a peaceful picket line.

Q. What were these precautions?

A. First, we told the men very emphatically, the men who volunteered to do picket duty, that there was to be absolutely no violence, no abusive language, no intimidation, in fact that they were to use only the legal and peaceful means which are allowed. We also saw to it that this actually was the way the picketing was conducted on the morning of February 24th on the Delta job.

Q. Is it sometimes the practice of unions to subject men to search before they go on the picket line in order to make certain that no weapons will be carried?

A. That is correct, that is done. In the Delta case none of our men had any weapons, every single individual was cautioned against carrying or using any weapon and all of the men were very emphatically counseled on their rights and what their procedure and conduct should be.

Q. Now if a picket line is established and succeeds in achieving the purposes which you have mentioned; if, for example, in this particular case you had been permitted to maintain your picket line and had thereby succeeded in winning the sympathy of the general public and in persuading some of the men on the job, for example some of the key employees, that they were acting as strike-breakers and should leave their jobs; and if as a result of these things, [fol. 58] some of the strike-breakers actually did leave their jobs, what would be the effect with regard to obtaining collective bargaining from the employer?

A. The effect would be that we would probably, the men rather, would probably be successful in being recognized by the contractor. The economic pressure on him due to the fact that his job was crippled would force him to recognize the bargaining agency of his employees, and he would undoubtedly sit down with us and negotiate a contract for wages, hours and conditions. On the other hand, as long as the men are now allowed to have a peaceful picket line, they are not able to persuade the workers to leave the jobs, with the result that there is no pressure exerted on the contrac-

tor and the chances of being able to be recognized by the contractor and to negotiate a collective bargaining agreement are reduced to practically nil.

Q. Speaking again for an instant of the question of taking the precautions which you have mentioned to insure that violence will not occur on the picket line. You mentioned that when a labor dispute is in progress it is generally a period of some strain and stress. Is that correct?

A. Yes.

Q. And there are pretty strong emotions involved on the part of the men, is that true?

A. That is true.

Q. Can you tell us in general what these emotions are [fol. 59] and by what they are caused?

A. The men feel that they are engaged in a fight for their jobs. Here is a job which they had obtained, they had been working at it, and through no fault of their own, but exclusively through the fault of the employer, these jobs have been taken away from them, in fact the men feel that the jobs have been stolen from them and therefore they very naturally feel a certain amount of anger and certain definite hard feelings are aroused.

Q. Referring to the men locked out on the Delta job, were any of them married men?

A. Yes.

Q. Married or single, do you know whether they had to rely upon their jobs for practically their entire income?

A. That is true. As a matter of fact most of those men were forced to go on relief when they could not get their jobs back.

Q. Is this matter of the strong emotional reaction of the men who feel that their livelihood has been unfairly taken away from them, is that matter considered by the union in determining whether to put on a picket line?

A. Yes. As I see it, the union uses good psychology when it realizes that those factors exist, and the union feels that the best safeguard that it can take against violence is to give the men an opportunity to express themselves and their arguments in a peaceful way.

[fol. 60] Mr. Gladstein: I think that is all.

Cross-examination:

Mr. Carr: Mr. Morgan, you stated that nothing will kill a strike faster than inactivity and then later you stated that

all of your statements given under direct examination were particularly true of the Delta controversy out of which this particular picketing arose. Now is it true that that fact was borne out in the Delta controversy; that when the picketing did stop on the Delta job after a number of criminal indictments were returned against members of the union, that the cause of Local 260 in the Delta controversy was more or less lost as far as any public interest in the jobs being taken away from the C.I.O. men, as you say, goes?

A. Yes. I believe, Mr. Carr, that the failure of the Mine, Mill and Smelter Workers, Local 260, to maintain a peaceful picket line on the Delta job was responsible for our failure to win recognition from the company, and definitely resulted in our losing the entire dispute. Very definitely that is true.

Q. Now, you yourself were indicted, were you not—I think I will strike that. Is it not true that the picketing was stopped by agreement between the union and the law enforcement agencies of Shasta County after a number of the union members had been indicted for a conspiracy to violate the ordinance in question?

[fol. 61] A. I would have to answer yes on secondhand information, Mr. Carr. I was not a party to the agreement, but I understand that such was the case. In any event when the county authorities indicted the union leaders for a felony, that is, conspiracy to violate the anti-picketing ordinance, why then it became impossible to continue the picket line because we could not ask the workers to subject themselves to being charged with a felony, which carries a penitentiary sentence on conviction, and therefore we were obliged to give up picketing altogether. And this was directly the cause of our losing the dispute with the employer, this fact of not being able to maintain the economic pressure on the employer which results from maintaining a peaceful picket line.

Q. You stated also that picketing is the only means that the unions have of meeting the high-powered publicity of certain employers in putting their cause before the public. Did you not?

A. I believe it is the fundamental and most effective method and usually as a practical thing the only method available to a union.

Q. On this particular Delta job, was any publicity of any kind given by the contractors or disseminated in any way by the contractors to your knowledge?

A. I will have to answer that in possibly an inaccurate manner. All I can say is that quite a few stories appeared in the newspapers, and it seems probable that they came [fol. 62] from company sources, that is, from the employer's sources. I can only draw that conclusion from the type of article in question. I haven't any proof that the contractor himself put out any publicity of that sort. I can only draw a conclusion from the contents of the articles that the press carried. Of course, some of the newspaper stories also carried the union side of the dispute.

Q. Now you say that there was publicity in the newspapers giving the union side of the case. Then it's true that the unions have an opportunity to publicize their cause through the newspapers?

A. Yes, the union does have the possibility of publicizing its case in the newspapers and through circulars, but the extent of coverage depends upon the viewpoint of the newspapers, and generally speaking, the newspaper publishers are more closely identified and allied with employers in these disputes and naturally this is reflected in editorials and news columns in the papers. I would like to say that I believe it is inherent in the right of the union, in connection with publicity, to effectually cripple and hamper the employers through the effective use of the picket line. This is a legal right and one which is and should be used by the unions.

Mr. Carr: Move to strike the last part about its being a legal right. That is a conclusion of law.

Mr. Gladstein: The expression "legal right" may go out. I will stipulate to that.

[fol. 63] Mr. Carr: It is true, is it not, that the unions also can and do hire halls and hold public meetings, meetings open to the public, and put forth their causes to the public?

A. Yes, but whether or not a union is able to hire a hall depends on a variety of factors, one of which is always the question of finances and usually that is a very serious problem to a union, especially if it is engaged in a labor dispute because precisely at that time is when the union is not receiving any income from its non-working members. An-

other factor is the type of community involved. In some communities it has been found impossible for a union to hire a hall. In other communities they experience little or no trouble.

Q. They do, however, have the opportunity to hold public meetings in some place in most every community?

A. For instance, in connection with Redding here, this particular dispute, I might say that no public hall was available in the city of Redding that the union could use, none whatsoever.

Q. Now, is it not true that the unions also can and do use the radio for publicity?

A. Yes. It is possible for unions to use the radio if they have the money but in most cases they do not.

Q. Now, you have spoken on a number of occasions of a peaceful picket line. How do you distinguish a peaceful picket line from any other?

[fol. 64] A. A peaceful picket line, I would say, is characterized by the following. I would say it is a group of men, not necessarily restricted to any particular number of men, but a group of men who are parading in front of a place of employment and usually carrying placards, advertising the facts in relation to the job and the dispute there, and who sometimes speak out with slogans or make known certain facts in regard to the job, without using abusive language of any sort, and without any physical or actual intimidation used against anyone.

Mr. Carr: That is all.

Redirect examination:

Mr. Gladstein: One or two questions. You mentioned that you considered it a matter of right and necessity for employees involved in a labor dispute to hamper and, I think you said, cripple an employer. In what sense did you use that terminology?

A. I meant in the economic sense, not the physical sense. I meant that an employer, if he was able to continue operating his job unhampered by any economic pressure put on by the union, would of course probably pay no attention to the demands of his men. But if through the use of effective peaceful picketing the job is hampered and the employer's supply of labor is cut off, or at least crippled, then to just that degree the union is successful in putting pressure on

[fol. 65] the employer and in bringing him around to dealing with the men.

Q. And thereby commanding collective bargaining?

A. That is right.

Q. Is it true that many men, whether they belong to the particular union or not, whether they are picketing or not, will respect the picket line and will not go through it or carry any products through it?

A. It has been my experience that men will not go through a picket line, especially men who are members of one labor organization or another, who have had any experience with labor disputes. They do not desire to have that stigma placed on them of crossing a picket line.

Q. In that way, I take it, the men on the picket line are successful through the medium of the picket line in dissuading teamsters, let us say, transportation workers of one sort or another, from bringing products to the job. Is that true?

A. That is correct. In fact, that is one of the most important purposes of a picket line, the fact that most teamsters and truck drivers are members of organized labor and will not knowingly pass through a picket line, and this has the necessary effect of cutting off the delivery of necessary supplies to the employer.

Q. I take it, Mr. Morgan, that fundamentally the men on the picket line want their jobs back, isn't that so?

A. Yes, the job is the thing the men want back.

[fol. 66] Q. And the winning or losing of the job will actually be decided at the very scene of the job, is that true?

A. That is true. Union men know that not everybody reads the newspapers, and especially many workers and potential strike-breakers would not know because they do not read the papers, what the particular facts on the job happen to be. Sometimes employers will offer heavy inducements to men to come from another locality and take over the jobs of the locked-out workers and in these instances the men who are brought in from outside would not know of the situation even if the local press had been carrying stories on it.

Q. Do you make that statement from your actual experience in these matters?

A. Yes, I know that has occurred on numerous occasions.

Mr. Gladstein: That is all.

Recross-examination:

Mr. Span: As a matter of fact there was no dispute on the Delta job as to hours of labor, the amount of pay, or the working conditions, was there?

A. Yes, there was. The primary matter at issue was the question of recognition of the collective bargaining agency of the men, but following through from that was the question of wages, hours and conditions, which was a very pertinent part of the entire controversy.

Q. I am asking as to the particular case—the matter of [fol. 67] wages was not in dispute, was it?

A. I can only answer that in this way—we attempted to obtain a contract with the contractor but never actually got to the point of discussing wages, he would not give us that opportunity.

Q. I ask that you answer the question yes or no.

Mr. Gladstein: He is trying to.

A. Here are the facts. We drew up a wage contract, that is, roughly, and we attempted to tender this to the contractor. We were not successful in doing this. This contract contained our demands for minimum wages and also maximum hours and provided for specific conditions. But as I said before, we were not successful because the contractor would not discuss this contract with us. Does that answer the question?

Q. No it does not. May I re-state it by asking if it is not true that the scale of wages for each class of employees on this particular Delta job was set, whether it did not conform to the union scale?

A. No, the scale that the contractor was paying was the minimum scale of wages set by the United States Department of Labor, which is true of every piece of work connected with the government. It was not the same as the union scale. Under the arrangement with the government, the contractor is free to pay whatever scale he desires or can be persuaded to pay, so long as he does not go below [fol. 68] the established minimum, that is, established by the government. The question of wages was very definitely a part of the controversy.

Q. To what extent was the question of wages a part of the controversy?

A. Well, to the same extent that it would be in any such matter. The men naturally wanted to establish a wage scale higher than the one they had.

Q. As a matter of fact, Mr. Morgan, the only way that wages was involved in the controversy was whether the members of your union would receive those wages, or whether the members of some other union would receive those wages.

A. That is not correct.

Q. The matter of hours of labor was not in controversy?

A. Yes, it was. In the same way that wages was.

Q. To what extent?

A. In general the question of hours in tunnel work is not a point of issue as far as the contract is concerned. It is fairly well established. However, the question of hours does come up, and the manner in which it comes up is in the question of lunch time, smoking time, things like that. In other words, the question of an employer trying to chisel on the hours even though the contract provisions are satisfactory.

Q. Were the conditions of labor, the working conditions, in controversy?

[fol. 69] A. Yes. The working conditions were in controversy.

Q. To what extent?

A. To the same extent that they would be on any tunnel construction job.

Q. Do you mean to say that the cause of the difficulty on the Delta job was a controversy over hours of labor, the wage scale, and working conditions?

A. No, I mean to say that the fundamental issue at stake on the Delta job was the question of recognizing the union, the union that represented the men as their collective bargaining agency, and secondly, the question of wages, hours, and conditions as they would come up for discussion and settlement between the collective bargaining agency and the employer. We never got to the second stage because the employer would not sit down and discuss anything with us.

Q. Was the matter of wages, hours and conditions ever actually brought in as a part of the controversy on the Delta job?

A. Yes.

Q. How was it?

A. At union meetings and at many meetings of the men from the Delta job.

Q. As a matter of fact, Mr. Morgan, wasn't that dispute on the Delta job primarily a question of whether members of your union would receive the privilege of working or whether that right to work on the Delta job would go to [fol. 70] others?

A. I have already testified that the primary issue at stake was the right of the Mine, Mill and Smelter Workers Union to be recognized as the collective bargaining agency of the men, and the second issue was the question of wages, hours, and conditions of work to be provided for in a written contract, a contract negotiated between the union and the company.

Q. What were the members of your union ultimately desiring to do, to return to their employment on the job, were they not?

A. I don't understand.

Q. Were not the members of your union, that is the twenty or twenty-two men that were dismissed as the record shows, were not they picketing for the purpose of having the United Concrete Pipe Corporation hire them back and recognize them and the local Union 260 as the bargaining agent for all employees on the United Concrete job.

A. Yes. Local 260 and the men who were picketing, as I stated, did this for the purpose of first obtaining recognition of their union to represent them, and second and pursuant to this, negotiating a contract for wages, hours, and conditions, at which time these men would return to work with union recognition and under union wages, union hours and union conditions.

Mr. Span: That is all.

[fol. 71] Redirect examination:

Mr. Gladstein: Mr. Morgan, the usual form of contract, which I think you mentioned in your testimony that your union attempted to obtain from the employer, contains a provision for an adjustment of grievances, does it not?

A. Yes.

Q. Is that an important feature of a collective bargaining agreement?

A. Very decidedly. An agreement which does not set up some means by which the workers on the job can take up

their grievances or disputes, or "beefs", as the men call them, does not accomplish very much. We know from experience that the problems between the employer and the union are never entirely settled just by the signing of an agreement. There are many things that come up during the life of the agreement which can act as very sore spots and might lead to strikes or other kinds of action, and naturally a proper and complete agreement takes this factor into consideration and provides in advance for a machinery by which grievances can be satisfactorily settled. All bona fide contracts have a grievance clause of this kind.

Q. These differences to which you refer, these disputes that arise from time to time under an agreement, do they relate to the question of hours?

A. They may be with respect to hours, wages, or working conditions. It may be that the contract does not conclu-
[fol. 72] sively cover every point. Usually, in fact, that is true, because it is not possible to foresee all of these things in advance. Therefore the board of adjustment or the grievance committee is provided for in order to take up these questions when they arise and get a decision on them. These questions may be of a large variety. It may be that the employer is infringing on the contract. He may be working his men longer than he should. Or perhaps he is not giving them sufficient lunch time. Sometimes in the matter of promotions or lay-offs the employer violates the seniority clause in the contract. All sorts of questions of this kind arise from time to time. These matters have to be taken up and adjusted through the grievance committee or the arbitration board.

Q. Are such grievances usual?

A. Well, of course it varies, depending on the employer, but it can be said as a general rule that they come up all the time. For example, an employer may be taking a man who receives a lower class of pay and place him on a more skillful and a more difficult job which entitles him to a higher rate of pay but the man does not always get paid the higher rate. That is a very frequent grievance in construction work, tunnel work like the Delta project.

Q. Now, when a union is bargaining with an employer and requests that the contract provide for such a grievance adjustment machinery, and the employer refuses, what would you say the nature of such a disagreement with the employer is?

[fol. 73] A. That is very clearly a dispute on conditions, conditions in general, which includes wages and hours.

Q. And if an employer refuses to bargain collectively altogether, what is the nature of the dispute?

A. The same. Obviously an employer who will not even discuss an agreement at all automatically bars discussion of grievance adjustments, and so I think it is definitely true in such a case that the employer's refusal makes the entire dispute one of hours, wages, and conditions of work.

Mr. Gladstein: I think that is all. Do you have any further questions, Mr. Carr? Have you, Mr. Span?

Mr. Carr: No. We have no further questions.

Mr. Gladstein: May I recall Mr. Weise for one or two more questions, Your Honor?

The Court: You may.

JOHN WEISE recalled as a witness for the defense, testified as follows:

Mr. Gladstein: Mr. Weise, testimony has been offered that one of the purpose of the peaceful picketing that took place in this case on February 24, 1939, was to persuade, if possible, men on the job to leave their job, to refuse to work behind a picket line. Do you know of any instance occurring on February 24th of any worker or workers actually working on that Delta job, leaving it because of the fact that a peaceful picket line had been established?

[fol. 74] A. February 24th, is that the day in question?

Q. Yes.

A. Yes, I know of one in particular, I know his name, and I also know of another but I do not know his name.

Q. How did you learn about these two instances?

A. One of them came to me personally, came to the union hall that very afternoon and told me that he had been working on the job but when the pickets arrived he threw down his tools and refused to work behind the picket line. The other came up to one of the picket captains, I have forgotten who he was, but subsequently I talked with him also.

Q. Now, these men, let me understand this correctly, was one of them already working on the job at the time the pickets arrived?

A. Yes, that is what I understand, he had already been working there that morning and when the pickets arrived

later on in the morning this man quit his job on seeing the picketing.

Q. Now, the other man, the one who subsequently talked with you, had he also been working on the job at the time the picketing began?

A. No, the other man was going to the job, he was looking for work there, and when he arrived at the project the picket line was already established and this man refused to go through it and decided he would not try to get work there.

Mr. Gladstein: That is all. The defendant rests.

[fol. 75] Mr. Carr: We have no rebuttal.

RENEWAL OF MOTIONS TO DISMISS

Mr. Gladstein: Now at this time, Your Honor, I would like to renew my previous motion to dismiss. There was a motion to dismiss this case which was filed prior to the plea, filed at the very first opportunity and before any evidence was offered. That was denied. Another similar motion to dismiss, but amplified somewhat, was filed at the conclusion of the People's case, and as Your Honor will remember, that motion was also denied. I now wish to renew both of those motions and also to add additional grounds for the present motion to dismiss; and I herewith file my motion in writing. In this motion I wish to urge all of the grounds contained in the motions heretofore made and also additional grounds which are specifically set forth in this motion. I hereby serve a copy of this motion upon the District Attorney (handing document to Mr. Carr). As these matters have been more or less argued before I will not take up the time of the court to repeat the arguments previously made.

Mr. Carr: We would like to submit to the ruling of the court on this motion, and we state again that we believe the evidence is sufficient to sustain a conviction and that the question of law relating to the constitutionality on which most of the motion is based has been decided as far as this court is concerned, or at least sufficient authority for this court to deny the motion exists in the ruling of the Superior Court of this county in the case of People vs. Gladstein, or [fol. 76] rather Ex parte Gladstein, in which the Superior Court sustained the constitutionality of this anti-picketing ordinance. I therefore ask this court to deny the motion.

The Court: The motion is denied.

Mr. Carr: Will you waive time for passing sentence on the judgment?

Mr. Gladstein: I haven't heard the judgment yet.

Mr. Carr: Is Mr. Carlson here at the present time?

Mr. Gladstein: No, he is not in the room, but under the Code his appearance can be waived, and I am willing to stipulate to such a waiver. As far as the defendant is concerned, judgment can now be rendered.

JUDGMENT

The Court: The court finds that John Carlson is guilty of violating the Shasta County Anti-Picketing Law.

Mr. Gladstein: Then at this time, Your Honor, I wish to file a motion in arrest of judgment. Here is the original and here is a copy for you, Mr. Carr. I wish the record to show that I now move the court to arrest the judgment which it has just made upon the grounds set forth in the motion just filed.

Mr. Carr: We request that this motion be denied.

The Court: The motion to arrest judgment is denied.

Mr. Carr: Will you waive time for sentence, Mr. Gladstein?

Mr. Gladstein: Yes.

The Court: Are you ready for sentence to be imposed?

[fol. 77] Mr. Gladstein: Yes.

The Court: The court will fine John Carlson twenty-five dollars or twelve days in jail in lieu of the fine.

Mr. Gladstein: I hereby give oral notice of appeal, Your Honor, and I will file within the time required by law a written notice of appeal. In view of the appeal which is being taken, may the sentence just pronounced by Your Honor be stayed until this matter is determined on appeal?

Mr. Carr: It is satisfactory to us, we have no objection if the court wants to make such a ruling, that the sentence be stayed pending the determination of the appeal.

The Court: Yes, that will be the order. A fine of twenty-five dollars or twelve days in jail, and the sentence will be held up while the case is on appeal.

[fols. 78-79] Reporters' Certificates to foregoing transcript omitted in printing.

[fol. 80] CERTIFICATE OF JUSTICE

I, Marie C. Mahon, Justice of the Peace of the Justice's Court of Township Number Nine, County of Shasta, State of California, hereby certify that the foregoing transcript is a full, true, correct and fair transcript of the proceedings had at the trial, the testimony offered or taken, evidence offered or received, words and statements of the court, also objections and exceptions of counsel and matters to which the same related, the proceedings had at the times the defendant made his various motions therein to be found, together with the rulings and comments of the court thereon, and also the proceedings at the time the defendant took his appeal, in the case entitled "The People of the State of California vs. John Carlson", tried by me on the 11th day of April, 1939 and on the 28th day of April, 1939.

I further certify that none of the parties to this action, or anyone else, has in any manner made any objections or taken exception to the correctness of said transcript as it now stands.

I further certify that no objection has been made by anyone within ten days or within the time allowed by law or at all to the within transcription of the notes of the reporters taken at the trial of the said case.

Dated: May 31, 1939.

Marie C. Mahon, Justice of the Peace.

[fol. 81] County Clerk's Office

STATE OF CALIFORNIA,
County of Shasta, ss:

I, Errol A. Yank, County Clerk of the County of Shasta, and ex-officio Clerk of the Superior Court thereof, do hereby certify the foregoing to be a full and correct copy of the Anti-Picketing Ordinance passed on the 4th day of April, 1938, by the Board of Supervisors of Shasta County, State of California now on file and of record in my office.

Witness my hand and seal of said Court, this 11th day of April, 1939.

Errol A. Yank, Clerk, by Ruth A. Presleigh, Deputy,
(Seal Superior Court, Shasta County.)

(Here follow 5 photolithographs, side folios 82-86)

EXHIBIT "A"

Anti-Picketing Ordinance

AN ORDINANCE PROHIBITING LOITERING, PICKETING, CARRYING OR DISPLAYING BANNERS, BADGES, SIGNS OR TRANSPARENCIES, OR SPEAKING IN PUBLIC STREETS, SIDEWALKS, ALLEYS OR OTHER PUBLIC PLACES IN A LOUD OR UNUSUAL TONE, FOR CERTAIN PURPOSES THEREIN NAMED, AND PROVIDING A PENALTY FOR ANY VIOLATION THEREOF

THE BOARD OF SUPERVISORS OF THE COUNTY OF SHASTA, STATE OF CALIFORNIA, DO ORDAIN AS FOLLOWS:

Section 1. It shall be unlawful for any person, in or upon any public street, highway, sidewalk, alley or public place in the County of Shasta, State of California, to make any loud or unusual noise, or to speak in a loud or unusual tone, or to cry out or proclaim, for the purposes of inducing or influencing, or attempting to induce or influence, any person to refrain from entering any works or factory or any places of business or employment, or for the purpose of inducing or influencing, or attempting to induce or influence any person to refrain from purchasing or using any goods, wares, merchandise or other article or articles, or for the purpose of inducing or influencing or attempting to induce or influence any person to refrain from doing or performing any service or labor in any works, factory, place of business or employment, or for the purpose of intimidating, threatening or coercing, or attempting to intimidate, threaten or coerce, any person who is performing, seeking or obtaining service or labor in any works, factory, place of business or employment.

Section 2. It shall be unlawful for any person, in or upon any public street, highway, sidewalk, alley or other public place in the County of Shasta, State of California, to loiter in front of, or in the vicinity of, or to picket in front of or in the vicinity of, or to carry, show or display any banner, transparency, badge or sign in front of, or in the vicinity of, any works, or factory, or any place of business or employment, for the purpose of inducing or influencing, or attempting to induce or influence, any person to refrain from entering any such works, or factory or place of business, or employment, or for the purpose of inducing or influencing, or attempting to induce or influence, any person to refrain from purchasing or using any goods, wares, merchandice; or other article or articles, or for the purpose of inducing or influencing, or attempting to induce or influence any person to refrain from doing or performing any service or labor in any works, factory, place of business or employment, or for the purpose of intimidating, threatening or coercing, or attempting to intimidate, threaten or coerce any person who is performing, seeking or obtaining service or labor in any such works, factory, place of business or employment.

Section 3. That any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than TWENTY-FIVE and NO-100 ($25.00) DOLLARS nor more than ONE HUNDRED AND NO-100 ($100.00) Dollars or by imprisonment in the County Jail for a period of not more than fifty (50) days nor less than twelve (12) days or by both such fine and imprisonment.

If any section, sentence, clause or other part of this Ordinance is for any reason held to be unconstitutional, such decision shall not affect the remaining portions hereof. The Board of Supervisors of the County of Shasta, State of California, hereby declares that it would have passed this Ordinance or act and each section, sentence, clause and part thereof despite the fact that one or more sections, sentences, clauses, or parts thereof be declared unconstitutional.

This Ordinance shall take effect and be in force immediately upon its passing and all Ordinances of the County of Shasta, State of California, in conflict herewith are hereby repealed.

The Board of Supervisors of the County of Shasta, State of California, does hereby find, determine and declare to exist a county emergency affecting the peace, health, safety and comfort of the people and residents of the County of Shasta, State of California, caused by and resulting from disputes and differences between the employers of labor, their employees, organized labor and between different groups and factions of employees, which disputes and differences have created and increased a spirit of violent animosity between individuals and groups of said employers and employees, which has resulted in, and which continue to and threatens to continue to result in the use of coercion, picketing, and all manner of violence, and that such emergency arises out of the following facts, to-wit:

Certain groups of workers and employees within the County of Shasta, State of California, are organized into trade or labor unions, many of which are affiliated with State and National unions; the individual members of said unions are subject to the rules and regulations of said unions, and are required to pay for their membership

gations of becoming members of such unions; one of the primary objections which these employees have to such union membership is that the union member may be required, upon the dictate of his union, to go on strike, and that thereby the member is thrown out of work and is forced to suffer unnecessary hardships and may thereby even become a public charge. Said employees are satisfied with their employment, and it is to their individual interest, and to the interest of the County of Shasta that these employees be permitted to continue in their work uninterruptedly and with perfect freedom, for otherwise these employees cannot support themselves or their families and the County will have the burden of caring for them as public charges.

Efforts are being made by the aforesaid unionized groups of employees to force, by means of coercion, fear and violence, all laborers, workers and employees, regardless of their individual wishes, to become members of unions and to contribute financially thereto and to conform to the rules and regulations and dictates thereof, and by these means said unions and their members are seeking to control and regulate all business and employment in the County of Shasta. One of the means now being employed by said unions to accomplish the aforesaid purposes is the picketing of places of business in the County of Shasta, and unless they are prohibited from so doing, said unions and their members will continue to so picket, and will thereby agitate the peace of mind of the people of the County of Shasta, and will foment resistance to said union activities, and will bring about a condition of open physical violence and a state of riot and uncontrollable mob action which will endanger the lives, health, property, comfort and peace of mind of all the people and citizens of the County of Shasta.

There does not now exist any statute or Ordinance covering, regulating or prohibiting picketing as aforesaid, and the police officers, sheriffs and constables of the County of Shasta are now without authority to stop said picketing in the absence of an Ordinance pertaining thereto.

This Ordinance is hereby declared to be an urgency measure necessary for the immediate preservation of the public peace, health and safety, and shall, therefore, go into effect immediately, as hereinabove provided.

Passed by the Board of Supervisors of the County of Shasta, State of California, this 4th day of April, 1938, by the following vote:

AYES: Supervisors Junkans, Jessen, Colby, Plumb and Chatham.

Noes: None.

PUBLIC PLACES IN A LOUD OR UNUSUAL TONE, FOR CERTAIN PURPOSES THEREIN NAMED, AND PROVIDING A PENALTY FOR ANY VIOLATION THEREOF

THE BOARD OF SUPERVISORS OF THE COUNTY OF SHASTA, STATE OF CALIFORNIA, DO ORDAIN AS FOLLOWS:

Section 1. It shall be unlawful for any person in or upon any public street, highway, sidewalk, alley or public place in the County of Shasta, State of California, to make any loud or unusual noise, or to speak in a loud or unusual tone; or to cry out or proclaim, for the purposes of inducing or influencing, or attempting to induce or influence, any person to refrain from entering any works or factory or any places of business or employment, or for the purpose of inducing or influencing, or attempting to induce or influence any person to refrain from purchasing or using any goods, wares, merchandise or other article or articles, or for the purpose of inducing or influencing or attempting to induce or influence any person to refrain from doing or performing any service or labor in any works, factory, place of business or employment, or for the purpose of intimidating, threatening or coercing, or attempting to intimidate, threaten or coerce, any person who is performing, seeking or obtaining service or labor in any works, factory, place of business or employment.

Section 2. It shall be unlawful for any person, in or upon any public street, highway, sidewalk, alley or other public place in the County of Shasta, State of California, to loiter in front of, or in the vicinity of, or to picket in front of or in the vicinity of, or to carry, show or display any banner, transparency, badge or sign in front of, or in the vicinity of, any works, or factory, or any place of business or employment, for the purpose of inducing or influencing, or attempting to induce or influence, any person to refrain from entering any such works, or factory or place of business, or employment, or for the purpose of inducing or influencing, or attempting to induce or influence, any person to refrain from purchasing or using any goods, wares, merchandise, or other articles, manufactured, made or kept for sale therein, or for the purpose of inducing or influencing or attempting to induce or influence any person to refrain from doing or performing any

and upon conviction thereof shall be punished by a fine of not less than TWENTY-FIVE and NO-100 ($25.00) DOLLARS nor more than ONE HUNDRED AND NO-100 ($100.00) Dollars or by imprisonment in the County Jail for a period of not more than fifty (50) days nor less than twelve (12) days or by both such fine and imprisonment.

If any section, sentence, clause or other part of this Ordinance is for any reason held to be unconstitutional, such decision shall not affect the remaining portions hereof. The Board of Supervisors of the County of Shasta, State of California, hereby declares that it would have passed this Ordinance or act and each section, sentence, clause and part thereof despite the fact that one or more sections, sentences, clauses, or parts thereof be declared unconstitutional.

This Ordinance shall take effect and be in force immediately upon its passing and all Ordinances of the County of Shasta, State of California, in conflict herewith are hereby repealed.

The Board of Supervisors of the County of Shasta, State of California, does hereby find, determine and declare to exist a county emergency affecting the peace, health, safety and comfort of the people and residents of the County of Shasta, State of California, caused by and resulting from disputes and differences between the employers of labor, their employees, organized labor and between different groups and factions of employees, which disputes and differences have created and increased a spirit of violent animosity between individuals and groups of said employers and employees, which has resulted in, and which continue to and threatens to continue to result in the use of coercion, picketing, and all manner of violence, and that such emergency arises out of the following facts, to-wit:

Certain groups of workers and employees within the County of Shasta, State of California, are organized into trade or labor unions, many of which are affiliated with State and National unions; the individual members of said unions are subject to the rules and regulations of said unions, and are required to pay for their membership therein; many employees within the County of Shasta, (and in the opinion of this Board, the majority of such employees,) do not desire to incur the expense or subject themselves to the obli-

gations, and to the interest of the County of Shasta that these employees be permitted to continue in their work uninterruptedly and with perfect freedom, for otherwise these employees cannot support themselves or their families and the County will have the burden of caring for them as public charges.

Efforts are being made by the aforesaid unionized groups of employees to force, by means of coercion, fear and violence, all laborers, workers and employees, regardless of their individual wishes, to become members of unions and to contribute financially thereto and to conform to the rules and regulations and dictates thereof, and by these means said unions and their members are seeking to control and regulate all business and employment in the County of Shasta. One of the means now being employed by said unions to accomplish the aforesaid purposes is the picketing of places of business in the County of Shasta, and unless they are prohibited from so doing, said unions and their members will continue to so picket, and will thereby agitate the peace of mind of the people of the County of Shasta, and will foment resistance to said union activities, and will bring about a condition of open physical violence and a state of riot and uncontrollable mob action which will endanger the lives, health, property, comfort and peace of mind of all the people and citizens of the County of Shasta.

There does not now exist any statute or Ordinance covering, regulating or prohibiting picketing as aforesaid, and the police officers, sheriffs and constables of the County of Shasta are now without authority to stop said picketing in the absence of an Ordinance pertaining thereto.

This Ordinance is hereby declared to be an urgency measure necessary for the immediate preservation of the public peace, health and safety, and shall, therefore, go into effect immediately, as hereinabove provided.

Passed by the Board of Supervisors of the County of Shasta, State of California, this 4th day of April, 1938, by the following vote:

AYES: Supervisors Junkans, Jessen, Colby, Plumb and Chatham.

Noes: None.

Absent: None.

ANDREW T. JESSEN,
Chairman.

ATTEST: ERROL A. YANK,
Clerk.


Dont be
a
SCAB

Shasta Tunnel & Construction Workers

LOCAL 260

EXHIBIT 52

84

CIO

Picket Line

EXHIBIT 63

85

This JOB Unfair to CIO

EXHIBIT b4

[fol. 87] DEFENDANT'S EXHIBIT 1

UNITED STATES OF AMERICA:

BEFORE THE NATIONAL LABOR RELATIONS BOARD, TWENTIETH REGION

Case No. XX-C-599

In the Matter of UNITED CONCRETE & PIPE CO. and SHASTA TUNNEL & CONSTRUCTION UNION LOCAL #260

This is to certify that the attached is a true and correct copy of the Charge in the above matter on file in the office of the Twentieth Region of the National Labor Relations Board.

(Signed) John T. McTernan, Acting Regional Director, 20th Region, National Labor Relations Board.

[fol. 88] UNITED STATES OF AMERICA:

BEFORE THE NATIONAL LABOR RELATIONS BOARD, TWENTIETH REGION

Case No. XX C 599

In the Matter of UNITED CONCRETE & PIPE CO. and SHASTA TUNNEL & CONSTRUCTION UNION LOCAL # 260

Date Filed Feb. 4, 1939

Charge

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that United Concrete & Pipe Co. (Redding, Calif., Los Angeles, Cal.—Main Office) has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of said Act, in that the United Concrete & Pipe Company has interfered with and is interfering with the self organization of its workers by refusing to recognize and bargain with the union in spite of the fact that said organization represents a large majority of its workers employed

on its tunnel job of the Central Valley project near Redding, California, on which job the workers in question are employed.

Said company, in spite of the fact that the A. F. of L. represents only two men now employed, has entered into a contract with the A. F. of L. as the bargaining agency for the job.

[fol. 89] The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

Shasta Tunnel & Construction Workers Union—Local #260. (Sgd.) John Morgan, Int. Rep., Box 18, Central Valley, Calif.

Subscribed and sworn to before me this 4 day of February, 1939, at San Francisco, Cal. (Signed and Sealed) E. S. Neal, Field Examiner.

[fol. 90] DEFENDANT'S EXHIBIT 2

UNITED STATES OF AMERICA:

BEFORE THE NATIONAL LABOR RELATIONS BOARD, TWENTIETH REGION

Case No. XX-C-599

In the Matter of UNITED CONCRETE & PIPE COMPANY and SHASTA TUNNEL & CONSTRUCTION WORKERS UNION LOCAL #260

This is to certify that the attached is a true and correct copy of the Amended Charge in the above matter on file in the office of the Twentieth Region of the National Labor Relations Board.

(Signed) John T. McTernan, Acting Regional Director, 20th Region, National Labor Relations Board.

[fol. 91] UNITED STATES OF AMERICA:

BEFORE THE NATIONAL LABOR RELATIONS BOARD, 20th REGION

Case No. XX C 599

In the Matter of UNITED CONCRETE & PIPE COMPANY and SHASTA TUNNEL & CONSTRUCTION WORKERS UNION LOCAL #260

Date Filed Feb. 11, 1939

Amended Charge

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that United Concrete & Pipe Company, Redding, Calif. (Head Office at Los Angeles, Cal.) has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) & (5) of said Act, in that the United Concrete & Pipe Company has interfered with and is interfering with the self organization of its workers by

1. Refusing to recognize and bargain with the union which organization represents a large majority of its workers.

2. Continuing to recognize and bargain with the A. F. L. with which union it entered into a contract on the date of January 28, 1939, and which union did not at that time and has at no time since represented the company employees.

3. Locking out on the date of Feb. 2, 1938 the following workers solely because of their expressed desire to be represented by the above named union: Gus Larsen, Frank Carson, Frank Anderson, Carl Nelson, Jack Casperson, Chas. Anderson, V. H. Hawkonson, O. N. Blank, Arvid Larson, L. D. Palmer, Charles Carlson, Charles Nelson, Avid Holmes, John H. Carlson, James Humphreys, Chas. Phillips, K. Borglund, Fred Severseen.

[fol. 92] The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the

name and official position of the person acting for the organization.)

Shasta Tunnel Construction Workers Union Local #260. (Signed John Wiese, Sec'y, P. O. Box 88, Central Valley, Calif.

Subscribed and sworn to before me this 11 day of February, 1939, at San Francisco, Cal. (*Signed and Sealed.*) E. S. Neal, Field Examiner.

[fol. 93]. IN SUPERIOR COURT OF CALIFORNIA, IN AND FOR THE COUNTY OF SHASTA

10626

PEOPLE

vs.

JOHN CARLSON

DECISION

On this appeal from the justice's court of Township No. Nine, there seems to be no point of fact or law urged or available except the constitutionality of the county picketing ordinance. In the habeas corpus proceedings in this court last February, No. 10119, this court rendered an opinion upholding this ordinance and it now adopts said opinion and makes it a part of the decision in the instant case. Since that time there have been several rulings of superior courts in this state on the subject. But one of them was against the constitutionality of such an ordinance, the decision of the superior court of Contra Costa County. I have had this ruling and it seems to be more political than legal, using the word in its proper sense, as it is based on the alleged liberalism of California legislation and tendencies. However I am still convinced that anti-picketing legislation is not unconstitutional. It is within the proper province of the legislative bodies and, as the Shasta County board of supervisors has seen fit to pass this ordinance, it will be upheld by this court as long as it remains in effect.

The judgment appealed from is affirmed.

November 14th, 1939.

(Sgd.) Albert F. Ross, Judge.

[fol. 94] IN SUPERIOR COURT OF CALIFORNIA, IN AND FOR THE COUNTY OF SHASTA

No. 10626

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

JOHN CARLSON, Defendant

JUDGMENT ON APPEAL

After hearing on appeal as provided by law, and submission of the same to this Court:

It is hereby ordered, adjudged and decreed that the judgment of the Justice's Court of Township No. Nine, County of Shasta, State of California, be and the same is hereby affirmed, and the clerk of this court is directed to transmit a certified copy of this judgment and the opinion of the court to said Justice's Court, after which said justice's court shall have full jurisdiction to proceed in this matter to carry into effect the judgment of conviction which is hereby affirmed.

Done in Open Court this 14th day of November, 1939.

(Sgd.) Albert F. Ross, Judge of the Superior Court.

[fol. 95] IN SUPERIOR COURT OF CALIFORNIA, IN AND FOR THE COUNTY OF SHASTA

No. 10119

In the Matter of the Petition of RICHARD GLAIDSTEIN, et al., for a Writ of Habeas Corpus

OPINION

The only point on this hearing is whether the Anti-Picketing Ordinance of Shasta County is unconstitutional to the extent that it prohibits the acts set forth in the complaint filed agains these petitioners.

"The undisputed general rule is that all presumptions and intendments are in favor of the constitutionality of statutes; that all doubts are to be resolved in favor of and not against the validity of a statute; that before an act can be declared invalid by the judiciary for the reason that it is

in conflict with the constitution, such conflict must be clear, positive, abrupt and unquestionable, and that in case of fair, reasonable doubt of its constitutionality, the statute should be upheld." 5 California Jurisprudence, page 628.

There seems to be no definite holding by the Courts of California that an ordinance or statute prohibiting peaceful picketing is or would be either constitutional or unconstitutional. The question is very debatable, and, from the tendency of the courts in recent years to liberality in such matters, might be decided by the higher courts in favor of [fol. 96] unconstitutionality.

However the courts to date have only gone so far as to recognize a right of peaceful picketing, and have carefully avoided holding that this right might not yield to a proper exercise of the police power by the legislature, boards of supervisors or city councils.

The most recent case, In Re Lyons, 27 California Appellate Reports, Second Series, page 293, expressly states, "No statute or ordinance prohibiting or regulating picketing is here involved. What may be the right under the police powers of the state, or any of its political subdivisions, to *prohibit* or regulate the use of the public streets or sidewalks for picketing is not before us and is not decided."

The various other cases on the subject carry the same thought throughout.

Therefore in the absence of any ruling of the Appellate Courts or the Supreme Court of this state that such a statute or ordinance is unconstitutional, and there certainly being at least a logical argument that such is a proper exercise of the police power for the preservation of the public peace and safety, I hold the ordinance must be deemed to be constitutional.

The court therefore makes the following minute order:

The writ of habeas corpus is discharged, the petition is denied and the petitioners are remanded in the custody of [fols. 97-98] the sheriff of Shasta County, and the clerk is directed to redeliver to the sheriff the original warrant of arrest which was filed by said sheriff with his return herein, together with a certified copy of this minute order.

February 27, 1939.

Albert F. Ross, Judge of the Superior Court.

[fol. 99] SUPREME COURT OF THE UNITED STATES

[Title omitted]

Petition for Appeal, Assignment of Errors, and Prayer for Reversal

Considering himself aggrieved by the final judgment and decision of the Superior Court of the State of California, in and for the County of Shasta, in the above-entitled cause, the petitioner hereby prays that an appeal be allowed to the Supreme Court of the United States.

SUMMARY STATEMENT OF THE CASE

The validity of a statute of the State of California within the meaning and intent of Section 237 (a) of the Judicial [fol. 100] Code of the United States is drawn into question in the above-entitled cause, upon the grounds that said statute deprived appellant, in contravention of the Fourteenth Amendment to the Constitution of the United States, of liberty and property without due process of law, by denying him freedom of speech, freedom of the press, freedom of locomotion, the right peaceably to assemble, the equal protection of the laws, and rights under the National Labor Relations Act, 49 U. S. Statutes, 449. Said statute is an ordinance of the County of Shasta, State of California, entitled "Anti-Picketing Ordinance", passed and adopted by the Board of Supervisors of the said County on the 4th day of April, 1938.

The appellant was convicted in the Justice's Court of Township No. 9, County of Shasta, State of California, of a violation of said ordinance, in that the appellant was charged with, and found guilty of picketing upon a public highway within said County, for the purpose of inducing and influencing persons to refrain from doing and performing services and labor at a place of employment and business known as the Delta Tunnel Project.

The conviction was appealed to the Superior Court of the State of California, in and for the County of Shasta. Said Superior Court upheld and sustained said conviction. The judgment and decision of said Superior Court rejected the contentions of appellant that the portions of said ordinance under which appellant was charged and for a viola-

[fol. 101] tion of which he was found guilty, were and are, on their face and as enforced and applied in the case of appellant, unconstitutional by virtue of the Fourteenth Amendment to the Constitution of the United States.

The said judgment and decision of said Superior Court was made and entered on the 14th day of November, 1939. Said judgment and decision is a judgment of the court of last resort of the State of California in said case.

Assignment of Errors

The appellant assigns the following errors in the record and proceedings in said case:

1. The said Superior Court erred in its decision and judgment that the said Anti-Picketing Ordinance, on its face and as enforced and applied to the appellant, is valid and constitutional, and does not deprive the appellant of liberty and property without due process of law under the Fourteenth Amendment to the Constitution of the United States, by denying the appellant freedom of speech, freedom of the press, freedom of locomotion, the equal protection of the laws, the right peaceably to assemble, and the rights of the appellant under the National Labor Relations Act, 49 U. S. Statutes 449.

[fol. 102] 2. Said Superior Court erred in its decision and judgment in that it failed to rule and decide that the portions of said ordinance under which the appellant was charged and for a violation of which he was convicted, were and are unconstitutional by virtue of the decisions of the Supreme Court of the United States in Senn vs. Tile Layers' Protective Union, 301 U. S. 468; Hague vs. Committee for Industrial Organization, 83 L. Ed. 928; and Schneider vs. Irvington (and 3 other cases), 84 L. Ed. Adv. Op. 415.

Prayer for Reversal

For which errors, the appellant prays that said judgment of the Superior Court of the State of California, in and for the County of Shasta, dated November 14, 1939, in the above-entitled cause, be reversed, and a judgment rendered in favor of the appellant, and for costs.

Gladstein, Grossman & Margolis, Attorneys for Appellant, by Richard Gladstein.

Copy received this 8th day of January, 1940.

Lawrence W. Carr, District Attorney.

[fol. 103] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL

The appellant in the above-entitled matter, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above-entitled matter by the Superior Court of the State of California, in and for the County of Shasta, on the 14th day of November, 1939, and from each and every part thereof; and

The appellant having presented his petition for appeal, assignment of errors, prayer for reversal, and statement [fol. 104] as to jurisdiction, pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided;

It is now ordered that an appeal be, and the same is, hereby allowed to the Supreme Court of the United States from the Superior Court of the State of California, in and for the County of Shasta, in the above-entitled cause, as provided by law; and

It is further hereby ordered that the clerk of the Superior Court of the State of California, in and for the County of Shasta, shall prepare and certify a transcript of the record, proceedings, and judgment in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Supreme Court within 60 days of this date; and

It is further hereby ordered that security for costs on appeal be fixed in the sum of $100.00.

Dated: This 8th day of January, 1940.

Albert F. Ross, Judge of the Superior Court of the State of California, in and for the County of Shasta.

Copy received this 8th day of January, 1940.

Lawrence W. Carr, District Attorney.

[fols. 105-106] Bond on appeal for $100.00 omitted in printing.

[fols. 107-108] Citation, in usual form, showing service on Lawrence W. Carr omitted in printing.

[fol. 109] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed Feb. 7, 1940

Comes now the Appellant and adopts his Assignment of Errors as his Statement of Points to be Relied Upon and represents that the whole of the record as filed is necessary for consideration of the case.

Lee Pressman, Joseph Kovner, Attorneys for Appellant.

Copy of the foregoing Statement duly received this 5th day of February, 1940.

Lawrence W. Carr, Attorney for Appellee.

[fol. 110] [File endorsement omitted.]

Endorsed on Cover: File No. 44,074, California, Superior Court, County of Shasta, Term No. 667. John Carlson, Appellant, vs. The People of the State of California. Filed January 25, 1940. Term No. 667. O. T. 1939.